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OF

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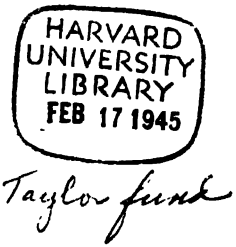

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REVIEWS.

IMPRISONMENT OF JEFFERSON DAVIS.

Prison Life of Jefferson Davis, embracing Details and Incidents in his Captivity, Particulars concerning his Health and Habits, together with many Conversations on Topics of great Public Interest. By Bvt. Lieut.-Col. John J. Craven, M. D., late Surgeon U. S. Vols., and Physician of the Prisoner during his Confinement in Fortress Monroe, from May 25, 1865, up to December 25, 1865. New York: Carleton, Publisher, 413 Broadway. London: S. Low, Son & Co. MDCCCLXVI.

THE theme of this little volume, in itself and without words, is at once a sermon and a history. It tells of a change in the political institutions of a mighty nation more rapid and more thorough than any other which the annals of men record. It points to the melancholy spectacle of a government, founded on consent and consecrated to freedom, converted by the willing hands of a majority of the people whose birth-right it was, into a despotism controlled by popular passion and sectional interests. It signalizes, by a conspicuous and incontestable example, the substitution of a scheme of arbitrary violence, for a system based on written constitutions and ruling and punishing only through its laws.

More sad, a thousand fold, than all, it proclaims to us—whether as cause or effect it is unnecessary here to discuss—the decadence of that high and manly spirit, that generous and wholesome sense of right, that love of justice and fair-play, which animated and exalted our once noble institutions, through the first stage of their development, as with the inspiration of a great and living soul. The children are yet clinging round our knees, who were born before "State prisoners" were imagined as a possibility upon our soil, and the generation who preceded them—scarce half-grown even now—were taught the stories of the Doges' Palace, the Tower and the Bastille, of Olmütz and St. Helena and Ham, as a warning against the wickedness of kings and lords, and a lesson of thankfulness to the good God who had made a republic their birth-place. And yet, to-day, after having for five years seen with approval every fortress in the North stuffed full of men and women, dragged from their homes, at midnight or at midday, without warrant or authority or even form of law; after having witnessed the infliction upon large classes of their neighbors and friends, of all the contumely and outrage that brutality suggested to capricious and unbridled power, as a penalty for the exercise of freedom of opinion; the masses of the Northern people can behold, not only without shame, but with rejoicing, the long imprisonment and barbarous personal ill treatment of one of their most prominent and distinguished fellow-citizens, in notorious violation of the most rudimental of the principles, on which they go on vaunting, day after day, that their government reposes. And this too, not in the heat of conflict, when the best of men go sometimes mad with zeal or

passion, but in the midst of profound and established peace, when those who were lately in arms against them are not only vanquished but crushed, and nothing stands in the way of perfect harmony and reconciliation but the incapacity or unwillingness of the victors to be either generous or just.

Nor in the political antecedents or personal character or conduct of the chief victim, upon whom the unmanly vengeance of the Northern people is thus wreaked, is there anything to excuse, or even furnish a reasonable pretext for so relentless a persecution. There is no public man now living in the United States who has gone through the political conflicts of the last twenty years with a more stainless name. As a soldier, a senator, a cabinet minister of the old Union, gallant, able, active and efficient always, and developing those positive and somewhat aggressive traits of character, which provoke and stimulate antagonism and resentment, he never found an enemy so reckless as to question his patriotism or asperse his purity. Even now, shorn as he is of power and influence, the vanquished and captive chief of a ruined and, of course, unpopular cause, with all the personal and official animosities and criminations which belong to such a position crowding round him, there is yet to be heard among his constituents the first whisper of imputation upon his loyalty to the people who chose him as their leader, or his integrity in the administration of his office according to his judgment. Of those particular political opinions which are now held to be his crime, he not only made no concealment, while he was in the service of the United States, but was the open, avowed, conspicuous champion. He was elected and appointed to places of honor and responsibility, with the full knowledge,

on the part of both government and people, that he was the uncompromising advocate of State rights, in the broad Southern understanding of the term; and that, as he wrote to Mr. Bostick in the well known letter of May 14th, 1858, the honor and safety of the Southern people, their respect for their ancestors and their regard for their posterity would require them to "meet, at whatever sacrifice," any issue in which the maintenance of those rights might be involved. The resolutions introduced by him into the Senate of the United States in February or March, 1860, and in which his political creed on the vexed question of State sovereignty was set forth, did no more than place permanently upon record the familiar and oft-defended doctrines and principles of his whole public life. He was therefore as well known to be a secessionist at Charleston, in 1860, when General Butler voted fifty times to make him a candidate for the Presidency, as he now is, at Fortress Monroe, where General Butler would gibbet him, without trial, to-day, for the inconceivable crime of secession. Of his entire and honorable freedom from every imputation that could justly make a gentleman ashamed—unless the wickedness, incomprehensible to General Butler, of risking his life and fortune in defence of his most cherished convictions, be supposed to belong to that class—there can be no evidence more conclusive than the attempts which have been made, under the auspices of high officials of the Federal Government, to bring his name and person into unjust contempt, and attract to him, by false and infamous charges, the vindictive hatred of the populace.

The reader will recall the wretched and indecent fabrications transmitted by the Associated Press, from Washington,

under the inspiration of Mr. Secretary Stanton, at the time of the capture of Mr. Davis, whereby the foolish and credulous were instructed that "Jeff." was making his way to the Mississippi, with a wagon-load of gold which he had seized as his private plunder, and that when taken prisoner he was disguised "in his wife's crinoline" and pretended to be a woman. Of course the authors of so vulgar and paltry a defamation, well knew that it would impose on no one who understood the character of Mr. Davis, or had observed his public or private career, and that it would turn to nothing in the course of time, along with the thousand other official slanders which had hissed and died during the war. But they knew, equally well, that it would tend to hinder, for a while, among the masses of the people, that respectful sympathy which spontaneously opens itself to the misfortunes of a brave and fallen foe, and that it would contribute its share towards preparing them for the wholly un-American system of persecution which the parties in question had already devised for the torment of their victim.

And here, it may properly be observed, that there was one thing more than any other and perhaps than all others put together, in which the cabinet organized by Mr. Lincoln displayed especial and remarkable sagacity. Indeed, in summing up their career as an administration, we might perhaps be justified in saying that it was at the foundation of their whole success, and stood them, throughout, in stead of those high qualities of statesmanship, which such a crisis as the Confederate war would have developed in any nation less devoid of really great men than the Northern section of the United States. We refer to that perfect comprehension of the pas-

sions, prejudices, susceptibilities, vices, virtues, knowledge and ignorance of the people upon whom they had to practise. They knew every quiver of the popular pulse, and what it signified. They could weigh out, to a grain, the small quantity of truth to which the public appetite was equal, and they perfectly understood and measured the preternatural extent to which the popular digestion could assimilate falsehood. They were masters of every artifice that could mystify or mislead, and of every trick that could excite hope, or confidence, or rage. They knew every common-place and clap-trap that would affect the popular imagination or temper, as familiarly and as accurately as a stage manager is acquainted with the oldest of his theatrical properties. Understanding their pit thus well, they played to it, with wonderful tact and effect. They filled their armies, established their financial system, controlled the press and silenced opposition, by the same universal system of ingenious and bold imposture. We have before us an editorial article of Mr. Raymond of the New York Times, in which he testifies that on the night after the battle of Bull Run, he prepared an accurate and candid statement of the federal disaster and left it at the office of the telegraph, to be transmitted to the journal which he conducted, but that the censor of the War Department, to his surprise and without his knowledge, caused his report to be suppressed, and forwarded in its place the well known telegram, in which the triumph of the federal arms, at all points, was announced in startling capitals to the delighted North. The equally notorious despatch of Mr. Stanton to Governor Curtin, after the battle of Fredericksburg, is but one out of a thousand evidences that the Carnot—as Mr. Seward called

him—of the Lincoln cabinet, was as notable an adept as his predecessor, in that ancient art which was practised with less impunity in the days of Ananias and Sapphira.

It was not to be expected that the War Department of the United States, thus taught by long success the value of judicious falsehood, should content itself with seeking merely to bring into contempt the head of the fallen Confederate government. The war, in itself so violently antagonistic to the whole spirit and principles of the Constitution of the United States, could not of course be conducted without unconstitutional means and appliances. Among the most iniquitous of the contrivances resorted to, was the anomalous, inquisitorial tribunal, called the Bureau of Military Justice. A few years ago, no man would have dared to suggest such an engine of persecution, to the most unscrupulous of political organizations in this country. If established, it would have collapsed in a week, under the scorn and indignation of a people yet uneducated, by philanthropy, in violence and usurpation. Nevertheless, at the close of the war, it exercised almost unlimited power for evil. It was the centre of all the schemes of hidden wickedness and mischief which consumed so many millions of secret service money and raised up and debauched such an army of spies and informers throughout the land. It had grown to monopolize the getting up of persecutions, the organization of military commissions, the fabrication of evidence and the subornation of witnesses. Guided by the constitutional doctrines of Solicitor Whiting, the legal and military ethics of Dr. Lieber, and the systematized and ingenious malignity and invention of Judge Advocate General Holt, it could only have been surpassed, had Jeffreys, Vidocq

and Haynau been revived to sit in judgment together. Had its plans not been thwarted by the interposition of President Johnson, when the Supreme Court, under the most disreputable political influences, postponed, for a whole year, the promulgation of its opinion upon the constitutionality of Military Commissions, it would have opened a general campaign of judicial murder, besides which the Bloody Assizes of King James' Chief Justice would have lost their hitherto preëminent infamy. Under the inspiration of this Bureau, with the sympathetic assistance of Mr. Secretary Stanton, the well-known proclamation was issued, in which Mr. Davis was charged with having been accessory to the assassination of President Lincoln. It was a painful feature of that abominable outrage, that the confidence of President Johnson should have been abused by his official advisers to the extent of inducing him, in the first moment of his accession, to put his name to such a paper. To consider even for a moment, here, whether the parties by whom the calumny was made to take an official shape had any grounds for suspecting it to be true, which the bitterest honorable enemy of Mr. Davis would not have scorned to examine, would be an insult to our readers, not less than an indignity to the gallant gentleman against whose life and honor the poisoned shaft was aimed. It is safe to say that not one of the conspirators at the War Department ever harbored, for an instant, a sincere belief in the truth of the charge, either before or after it was made. If it had been honestly started under the passionate influences of the troubled hour in which it saw the light, it would have been manfully disavowed when the excitement was over, and especially after the disgraceful and utter failure

of the attempt to maintain it, with other injurious accusations, before the military inquisitions which decreed the murders of Mrs. Surratt and Captain Wirz. But it had done its work in filling the minds of the ignorant with prejudice and stimulating the hatred and fanaticism of party, and to have admitted its falsehood would have been to create a just reaction in favor of the victim. It was therefore allowed to stand without qualification as it was uttered, until the publication of the confidential correspondence between Mr. Holt and his agent Conover, disclosed not merely the perjury which had been suborned, but the deliberate and disgusting circumstances of the purchase. Then, for the first time, the head of the Bureau of Military Justice found himself forced into an attitude of defense, and was compelled to vindicate his integrity in the newspapers by a weak attempt to shift the blame upon the unsuspecting credulousness of his nature. It is now probably too late for him to escape the retributive justice of public and historical opinion, by pretending to punish the perjury-broker, whose hirelings he paid and used. Posterity will contemplate these incidents and others like them in the history of the war, with inexpressible astonishment, that the gigantic hopes and wonderful resources of such a nation as this should have been entrusted, in the vital moment of its destiny, to minds so little and souls so mean. Nor will they, we are sorry to believe, forget that for rulers like these and for their doings, the responsibility, under a republican form of government, is upon the people who endure such rule. The impartial times to come will hardly understand how a nation, which not only permitted but encouraged its government to declare medicines and surgi-

cal instruments contraband of war, and to destroy by fire and sword the habitations and food of non-combatants, as well as the fruits of the earth and the implements of tillage, should afterwards have clamored for the blood of captive enemies, because they did not feed their prisoners out of their own starvation and heal them in their succorless hospitals. And when a final and accurate development shall have been made of the facts connected with the exchange of prisoners between the belligerents, and it shall have been demonstrated, as even now it is perfectly understood, that all the nameless horrors which are recorded of the prison-houses upon both sides, were the result of a deliberate and inexorable policy of non-exchange on the part of the United States, founded on an equally deliberate calculation of their ability to furnish a greater mass of humanity than the Confederacy could afford, for starvation and the shambles, men will wonder how it was that a people, passing for civilized and Christian, should have consigned Jefferson Davis to a cell, while they tolerated Edwin M. Stanton as a cabinet minister.

We have referred to these apparently extraneous matters, for the purpose of showing upon what foundations the prodigal slanders were rested, by which the American people were induced to acquiesce in what we have already described as the un-American system of persecution to which Mr. Davis has been surrendered. One by one they have been demolished or tacitly abandoned, and it is now conceded upon all sides, that the only ground upon which the late President of the Confederate States has been or can be further restrained of his liberty, under any color of right, is the fact of his having been engaged in levying war against the United States. The

act which these latter words describe is treason within the language of the 3d section of 3d article of the Federal Constitution, and upon the applicability of that section to the case of Mr. Davis, depends, of course, the right to hold and try him for the crime which it defines. But before proceeding to the few observations upon that point, to which our space and the nature of this article confine us, we cannot avoid renewing the inquiry, why it is that Mr. Davis has been singled out for imputed treason, from the millions whom the Supreme Court of the United States has solemnly declared to be equally as guilty as he. "All persons," says Mr. Justice Grier, in delivering the opinion of that tribunal, in the Prize cases, "residing within this territory, whose property may be used to increase the revenues of the hostile power, are liable to be treated as enemies, though not foreigners. They have cast off their allegiance and made war on the government and are none the less enemies because they are traitors." Lawyers and publicists will of course judge for themselves in regard to the soundness of the doctrine thus announced, but it conveys, at all events, the deliberate judgment of the highest judicial authority under the Constitution. How is it then, that one man out of all these millions of "traitors" and "enemies" is sought to be made their scapegoat? Nay, the Supreme Court have gone farther than the language we have quoted. They have determined, in the same cases, by the mouth of the same judge, that the people of the South "in organizing this rebellion" *acted as States*, (*sic*) claiming to be sovereign over all persons and property within their respective limits, and asserting a right to absolve their citizens from their allegiance to the Federal Govern-

ment. "Several of these States," adds Judge Grier, "have combined to form a new Confederacy, claiming to be acknowledged by the world as a sovereign State." How is it, then, that Mr. Davis alone is to be held as the representative for punishment, not only of the millions of individual men by whom "the rebellion" was conducted, but also of the States whose corporate capacity and action the Supreme Court thus recognizes, and of the Confederacy, to which these States entrusted, as their representative, the belligerent powers and resources of the sovereignty which they respectively asserted? It is simply impossible that any reasonable answer can be given to these inquiries. That Mr. Davis had anything more to do with originating the Southern movement than hundreds of other prominent and able men, cannot be asserted with any respect for the truth. No Southern member of the Senate in 1861, was more anxious and ready than he for a compromise and pacific solution of the questions which were inflaming the public mind. No man retired from the Senate with more unfeigned and sorrowful reluctance, or left behind him a more respectful appreciation of his honesty, sincerity, dignity and manhood. His valedictory moistened the eyes of those who were most hostile to his political movements and opinions, and produced a sensation which no man, who witnessed the scene, will ever forget. He was elevated to the Presidential chair of the new-formed Confederacy, not as the representative of extreme opinions, or bitter feelings, but because of the respect in which his consistency, his honor, his single-heartedness, his courage and ability were held by the whole Southern people. With what perplexities and trials he had to struggle, yet with what earnestness and

success he managed, above all things, to prevent the action of his government and the conduct of its armies from being controlled by the vindictive rancor which the circumstances rendered so natural and so difficult to restrain, all who know anything of the internal struggles of the Confederacy can testify. The same history which canonizes the successful determination of Lamartine, at the Hotel de Ville, to prevent the rising republic of 1848 from lifting the red flag anew, which had been drenched in the blood of the people, will place side by side with it the moral heroism of Jefferson Davis, in forbidding the black flag to be unfurled, by any of the soldiers of the Confederate States, against the enemies who were menacing their homes, institutions and freedom.

Nor was it alone in the belligerent relations of the Confederacy that Mr. Davis was the representative of the spirit of moderation. In a contest, in which everything (and especially upon the weaker side) depended upon executive energy, concentration and promptness, he shrank from grasping a single power which was not confided to him by the Constitution. While the Federal government of the United States, looking only to success, and regardless of the means by which it might be assured, went trampling to the right and left, over every constitutional guaranty, over individual liberty and State authority alike, Mr. Davis persistently confined himself within the limits constitutionally assigned to him, determined, whatever might betide, that the Confederacy should at least not suffer at his hands the evils of executive usurpation. There are those among the best friends of Mr. Davis, who believe, with sadness, that in this he was perhaps more nice than wise, and that the circumstances would have justi-

fied him in temporarily opposing to the vigor of the despotism into which the government of the United States had been converted by Mr. Lincoln, a corresponding vigor, purchased at the same cost to the Southern people. This, of course, resolves itself into a question which we shall not discuss, between regarding Mr. Davis as the chief of a mere revolution, or as the head of an organized and constitutional government.

There is another particular, too, in which the administration of Mr. Davis has been exposed to the censure of both friends and foes, among his own constituents, which seems to render doubly heinous his selection as a victim from among the whole people whom he served. We refer to that peculiar gentleness and kindness of heart, which made it impossible for him to deal, in the spirit of his otherwise just and resolute character, with the thousand cases of individual and official delinquency, defect or misconduct which required his action. How much, in such a contest as the Confederate war, depends upon the inflexible maintenance of discipline and the relentless enforcement of official obligation, in every branch of the public service, civil as well as military, the experience of both parties to the struggle has sufficiently demonstrated. Whether they are in the right or not, who maintain that the sternness of Mr. Davis was not equal to the demands of his position in that regard, it is certainly true, that the instincts of his nature were in constant struggle with the harsher requirements of duty, and that the influence of his personal kindness was felt, not only among the soldiers and people of the Confederacy, but whenever he was able to mitigate, as to its enemies, the dread severity of war.

Except then, that he was the official chief and representative of the Confederate government and people; that by his ability, statesmanship and moderation, and the admirable official papers which came from his hand, he at once gave to his cause a position of honor and respect before the world and its rulers, and elevated the American name among all the nations; that his constancy and patriotism shared in every sacrifice and animated every effort of the struggle; that his dignity and courage gave consolation even to despair, and have ennobled defeat and captivity—except in these, there is no reason why he should not breathe the air to-day, as much a freeman as any other man who lifted the Confederate flag or fought beneath it. It were a sad commentary, at the best, on civilization and Christianity, and especially upon the vaunted influence of political liberty and republican institutions, that a war of political opinion—a war not waged for the subversion of society or government, but in vindication, upon both sides, of principles which they respectively assumed to be the basis of the constitutional system that had united them so long—should not end upon the battle-field, but should lead the vanquished to the dungeon and the scaffold. To have settled by brute force a question of constitutional right and self-government, would seem reproach enough, in itself, to the citizens of a republic which was founded on consent, and whose very origin made sacred and indefeasible the right of mankind to abrogate old governments and set up new. But that the victors in such a strife, not content with accepting their own superiority in numbers and material resources as conclusive upon a matter of reason and right, should select from the millions of their fellow-citizens who

have laid down their arms, the most conspicuous and honored of their public servants, to atone by his personal sufferings for the sinful opinions of his people, would seem like closing the volume of human progress, and dispelling forever the dreams of the enthusiasts who believe that freedom and self-government improve and enlighten men. With what humiliation do we turn from such a picture to the noble spectacle of the Provisional government of the French Republic of 1848, on the immortal occasion to which we have alluded. What a lesson in the grand words of Lamartine, when he proclaimed to his people in the first flush of their triumph, that it became them to make it "a victory and not a vengeance!" What an example in the abolition of the death-penalty for political offenses, as the first act of a government yet struggling with the infuriated passions of those who had created it, upon the arena still slippery with their own and their brothers' blood!

But assuming that all these teachings and examples, and all the better instincts of men and nations, are to be as nought, and that the South is to suffer, in the person of Mr. Davis, for the crime of its treason—if treason it were—let us consider for a moment how such a determination gets rid of the difficulty, which Mr. Burke found so insurmountable, of framing an indictment against a people. It may be premised, we suppose, without contradiction, that the idea of settling the question of the right of secession, by a judicial decision in the premises, is a simple and empty pretext. No one imagines that the Supreme Court would dare to pronounce in favor of that right, if the opinion of every judge on the bench were conscientiously and deliberately upon that side.

The people of the North would not tolerate such a decision, nor abide by it if it were given, for, as we have said, the question is claimed by them, upon all hands, to have been settled forever by the result of the war. Nay, the Supreme Court itself, in 1862, in the Prize Cases, after using the language which we have quoted above, as to the assumption of the seceding States to absolve their citizens from allegiance to the Federal Government and form a new Confederacy, declares in express terms that "their right to do so is now being decided by wager of battle." The wager has long since been won, and the Supreme Court, with the rest of the winners, has possession of the bloody stakes. To imagine that the judges of that tribunal could now hold otherwise than that the "right" in dispute had been "decided," would be sheer fatuity. The question is no longer open. The conclusion is already foregone. The trial, conviction and execution of every surviving soldier of the Confederate armies would not strengthen it a jot or a tittle. Their universal acquittal, with Mr. Davis at their head, would not shake it, for an instant, in the popular mind and determination of the North. To moot the question before the courts is therefore but to enact a judicial farce—none the less a farce because death is hid under the motley. Still, if the form of a hearing is to be gone through, the form of a defense is pre-supposed as part of the drama, and it becomes those who think that bayonets are not pure reason, to suggest what reason they have to the contrary.

The Supreme Court, as we have shown, has settled the question of both fact and law, that the Southern States "*acted as States*" in "organizing the rebellion." This was

not merely the recital of a historical incident by the Court, but was absolutely necessary as an element in the maintenance of the doctrine which the Prize Cases established. It was contended by the counsel of some of the claimants, citizens of Virginia, that they were not alleged or proved to be "traitors:" that insurrection was the crime of individuals, and that the relation of citizens to the government of the United States was purely an individual one: that the ordinances of secession, being unconstitutional and invalid, could not sever the allegiance of the citizen from the United States, or make him an enemy, and expose his property to capture and confiscation, if he was not, by his own individual act, in rebellion or hostility. There was but one possible escape, in the interest of the government, from this argument, and that was, to declare that the States went out "as States," in their corporate capacity, and that such State action, of itself, and without their personal participation, made every man, woman and child within the State limits an "enemy," in law, whether friend or enemy in fact. How a legal "nullity" could work such a legal result, is among the unexplained mysteries of belligerent jurisprudence—but still it was so decided; and the fact, legal and actual, that the States corporately, and not the individuals who composed them, "organized the rebellion," and formed the new Confederacy, was not only admitted, but set up, affirmatively, by the counsel of the United States and by the court itself, as part of the case of the government. Carried honestly out to its legitimate consequences, under the law of nations, this decision disposes of the whole "treason" pretense. If an act of war, committed by a State, makes its citizens enemies, *ipso facto*,

without reference to any conduct of their own, it must follow, of logical necessity, that all belligerent public acts, done by the citizen, are the acts of the State and not of the individual, and that they entail on the latter only the responsibility which attaches to enemies in arms, *flagrante bello*, and ceases when the war is over. They are, in the language of Burke, "offences of war," which "are obliterated by peace."

But, be this as it may, it is, at all events, impossible to dispute one logical result of the decision in question, viz: that if State action and authority can exonerate the individual citizen who has obeyed them, from the crime of treason to the United States in the act of such obedience, neither Mr. Davis nor any other Southern citizen or soldier can lawfully be charged with that offence. To those who recognize the broad Southern doctrine of the right of secession, as expounded and defended by Dr. Bledsoe in a remarkable work recently published, and entitled, "Is Davis a Traitor?" the case of course presents no difficulty in this aspect. The exercise of a right cannot involve a crime, and upon that theory the several State ordinances dissolved, at once, the relation and responsibility of the citizen to the general government. Under the modified doctrine, maintained with so much ability by Mr. Bayard of Delaware, in the Senate of the United States, the case is equally clear—for assuming, with him, the right of any of the States to withdraw from the constitutional compact, as sovereigns, whenever in their judgment its terms are infringed, coupled with the equal right of the other States to make war on those seceding, if they deem the secession to be causeless—it is still a question of war between sovereigns, involving belligerent rights and

their consequences, but merging all responsibility of the individual citizen on either side. Nor is it easy to perceive how a different practical result can be arrived at under the doctrine of Mr. Buchanan's message to the Congress of December, 1860. That message, although since denounced with unexampled bitterness, undoubtedly represented at the time the opinion of nearly all the leaders of the democratic party North, who were not secessionists avowed; and on the faith of it they pledged themselves, as every one remembers, to interpose their bodies, in the most heroic manner, between the coercionists on their own soil and their cherished brethren of the South. That they apostatized from their convictions and falsified their pledges as never a great party was known to do before; that they not only did not attempt to resist the advancing armies of abolitionism and coercion, but applied, in crowds, at once, for captaincies, colonelcies, major-generalships, and particularly paymasterships, as they had been wont to rush for places in the post-offices and the custom-houses, in the by-gone and beloved days of "rotation" and "the spoils;" is well known to all who are acquainted with the annals of political cowardice, bad faith and prostitution. But, as we have said, before the Dickinsons, the Bancrofts, the Butlers, and such like had been taught the inestimable value (in currency) of "the life of the nation," they agreed with Mr. Buchanan, that even if there was no constitutional right to secede, there was no constitutional right to coerce a State seceding. This being admitted, and the States having resisted, "as States," the exercise of the unconstitutional power of coercion, it would seem necessarily to follow, that their authority in such resistance was a legal protection and

security to their citizens—unless it can be shown that a State can repel an armed assault upon its rights, without the aid of its people, and that they commit a crime in aiding it to resist a forcible breach of the Constitution. It was upon this, among other grounds, that the Legislature of Maryland, in 1861, asserted the right of the State, if she saw fit, to prevent the passage of Federal troops across her soil, on their march to coerce and invade the South. The right to coerce being denied, under the Constitution, it was assumed to follow, that the assemblage and movement of troops for the purpose of coercion was a palpable violation of the Constitution, in furtherance of which the Federal Government could not claim the right of transit, which belonged to it only in aid and pursuance of its constitutional functions and powers.

And this leads to a view of the immediate question under discussion which we have never seen presented, although it appears to be obvious, and would certainly seem to dispose of the charge of treason, so far as concerns Mr. Davis and all others in like case with him. It has the great advantage too, of being connected in no way with the exciting questions of secession and coercion, and of involving no decision as to the right or wrong of the action which the seceding States deemed themselves justified in adopting.

Whatever may be said as to State rights and State sovereignty, in the Southern or democratic sense of those terms, no one entitled to be heard will deny, we presume, that the States are, in some respects, sovereign, and have rights, of some sort, attached to their sovereignty. That the rights they thus possess are as incapable of violation, without a violation of the Constitution, and as fully entitled to pro-

tection and vindication, as the rights delegated to the general government, is of course equally indisputable. Let it be assumed, for the sake of the argument, that some clear and conceded constitutional right of a State, or of all the States, is invaded or about to be invaded by the Federal power—that some unquestionable attribute of State sovereignty is about to be assailed, in a manner which will be incontestably in derogation of the Constitution. In many of such cases, a judicial solution of the difficulty may be practicable. There are others, of course, and especially when the scheme of usurpation is instant and forcible—in which delay puts an end to the possibility of defence or remedy. Assume, for instance, that a usurping President, under the direction of a usurping Congress or despising the remonstrances of a faithful one, is about to overthrow a State government by force of arms, and appropriate its territory to his own or the Federal uses, in acknowledged violation and contempt of the fundamental law. Let it be a case in which liberty is sought to be crushed as well as right. Can there be any dispute as to the duty and right of the State government to resist such an aggression, by force if it can—to marshal its troops, and defend its soil and the freedom of its people, by all the means within its reach? Can the right and duty of the sister States to join in such resistance be denied? And by right and duty, we mean, not in a revolutionary nor a merely moral sense, but under the Constitution, in order to resist its overthrow and maintain its inviolability? Surely none but the most besotted of consolidationists can say nay to these inquiries. In the twenty-eighth number of the *Federalist* Gen. Hamilton himself lays it down as "an axiom in our political system,

that the State governments, within all possible contingencies, afford complete security against invasions of the public liberty by the national authority * * * * * Possessing all the organs of civil power and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can combine all the resources of the community. They can readily communicate with each other, in the different States, and unite their common forces for the protection of their common liberty." Mr. Madison expands the same idea over the whole of the forty-sixth number, in which he endeavors to allay all apprehensions of danger from the Federal power, by showing that "its schemes of usurpation will be readily defeated by the State governments, which will be supported by the people." Indeed, he denounces with indignation those who "insult the free and gallant citizens of America," by the suspicion that they would hesitate about thus defending their liberties. Assuming, then, that there are cases, few or many, in which the Federal government may trench, with violence, upon the acknowledged rights and sovereignty of the States, and that the States have the right to resist such aggressions by force—which they must have, unless we are slaves—who is to determine when and whether such an occasion has arisen? Not the Federal government, of course, for that would reduce the right of resistance to an absurdity. The Supreme Court, in the well-known case of Martin *vs.* Mott involving the exercise of the military powers of the Federal Executive in certain contingencies of invasion or insurrection, determined, that from the nature of the powers and the objects to be accomplished, the officer entrusted with the authority is the sole and exclusive judge whether the exigency has arisen.

In the parallel case of Luther *vs.* Borden the Court has added "that the ordinary proceedings in courts of justice, would be utterly unfit for the crisis." By inevitable parity of reason, the States, in the cases we have assumed, and in a like crisis, must be the judges of their exigency also; and so being, the exercise of their judgment, and their commands to their citizens, in that exercise, must be a shield to the citizens who obey. In the case of Mitchell *vs.* Harmony the Supreme Court decided, that where a superior has a lawful discretion and exercises it, the inferior whom he commands is justified in his obedience and cannot be held responsible, though a wrong to third parties may result from it, and though the superior "may have abused his power, or acted through improper motives." This doctrine, which is founded on reason as well as authority, seems to place the conclusion above controversy, that where one of the States of the Union, in the exercise of its undoubted right to resist a Federal usurpation, sees fit to determine that a case for such resistance has arisen, the citizen who acts under the State authority, and is punishable under its laws if he refuses so to act, is not responsible to the Federal tribunals, though the State may have exercised its discretion unwisely, or prematurely, or even wrongfully, in the premises. Whether the State has "abused its power, or acted through improper motives," is a matter for the State and the Union to settle, but the citizen is shielded, let it be settled as it may.

We have suggested these points, (from among the many which present themselves,) with the necessary brevity, and rather for the mere sake of the truth and right, than from any hope that such things will be heeded. When a judge of

the highest tribunal of the United States, like Mr. Justice Grier, in delivering its opinion upon the gravest case ever presented to its consideration, is so lost to the decencies of his position as to sneer at an objection to Executive action, on the ground of its unconstitutionality, and to print the word "*Unconstitutional ! ! !*" in italics and with three notes of admiration, in order to make his contempt typographically conspicuous, it is, we fear, but wasted time, to appeal to any principle of the Constitution, however solemn, which stands between fanaticism or vindictiveness and the victim for whom they rage.

But were Mr. Davis ever so much the "traitor" that the Holts and Butlers call him, he still would have some rights—the right to a speedy and impartial trial under the provisions of the Constitution which he is accused of having violated—the right to be bailed, if the government declines to try him. Need we quote anew the language of the fifth and sixth Amendments to the Constitution, unhappily too well remembered through the land, from the contempt with which the usurpations of the war went trampling daily over them? When the sixth article declares that in "all criminal prosecutions, the accused shall enjoy the right to a speedy and impartial trial," does it mean that he shall be mocked, for eighteen weary months of insolent and harrassing outrage and delay, by every subterfuge that official prevarication can devise or party clamor can encourage? Does it mean that he shall be bandied from military commissions to judges and grand juries; that Underwoods and Chandlers and Chases shall hold him prisoner at their will, and try him or not, as their caprice or malice may suggest? Does it signify that

Republican Conventions shall determine upon the disposition to be made of him, and that Radical orators shall insist on his being held, that they may make a standing clap-trap of his life and his gibbet? Does it mean that the civil authorities are not to try him, because the military authorities have him in custody—and are not to deliver him from that custody, on Habeas Corpus, lest they should then have to try him? Does the Constitution of the United States intend that the President shall have the power to hand the prisoner over to the civil authority—in other words, to pass him from his own military hand to his civil hand—and yet not have the power to see that the civil authority, of which he is the head, discharges its duty or releases the prisoner? Time was, when to ask these questions were an insult. It is, now, perhaps only to provoke an official smile at the weakness which still talks about the Constitution!

We read in the very highest English authority upon criminal law and practice that "The principal ground for bailing, upon Habeas Corpus, and indeed the evil the writ was intended to remedy, is the neglect of the accuser to prosecute in due time. *Even in case of high treason, where the party has been committed upon the warrant of the Secretary of State, after a year has elapsed without his prosecution, the court will discharge him, upon adequate security being given for his appearance.*" As early as the close of the Revolution of 1776, Mr. Henry Laurens, then a prisoner in the Tower, was able to satisfy one of the British peers who visited him, that the writ of Habeas Corpus was already more speedily and thoroughly remedial in the colonies, than in the mother country. And yet there are those who think that we have

improved on the institutions of that generation and the wisdom and patriotism of the men who made them.

There is but one more topic which the imprisonment of Mr. Davis suggests, and upon that we touch with the reluctance which comes from utter disgust and shame. We refer, of course, to the personal indignities which have attended it—indignities at which the gorge of every decent, dispassionate man in the wide world must rise, and the obloquy of which must rest more heavily forever on the nation which has tolerated them, than even on the ruffians in office who had the baseness to direct their perpetration. There is something in the very idea of an old and honored citizen—once a cabinet officer of the nation, and unsurpassed in the ability with which his duties were discharged—a man of eloquence and thought—a Senator and statesman—a soldier whose body is scarred with honorable wounds suffered in the service of his country—a pure and upright public servant whose lips were never sullied by falsehood and whose hands are clean of corruption—there is something, we say, in the mere idea that such a man—wasted by disease and physically broken by disaster—should be manacled and fettered, with barbarous violence, in a fortress of this Republic—which must call the blush to every American cheek that conscious disgrace can redden. But even shame must give way to indignation and scorn, when it is remembered, that the infamy was perpetrated by the order of the very department over which the victim once presided with so much usefulness and honor; that it was commanded in utter wantonness, merely to lacerate and sting a sensitive, proud spirit, and that a general of the armies of the Union was the gratified instrument of its

infliction. It recalls the last days of the Roman Republic, when the tongue of a Cicero, captive and murdered, was pierced by the spiteful bodkin of a strumpet. And even this outrage of the manacles apart—the story of daily and nightly torments, and hourly petty persecutions—of needless hardships and discomforts, and gratuitous insults—has something in it which makes belief almost impossible, without a contempt for our race. Then too, the mean *espionage*, and paltry overlooking—the swarm of impertinent men and women let loose by his jailor on his feeble walks and domestic privacy—the sick man driven to his cell by the insufferable peering of rude and vulgar eyes—what a spectacle these things present of the magnanimity of a great nation! And when at last the prisoner is allowed the common decencies of a country jail and is permitted to share the society of his wife and children, what a clamor over the land it causes—some cursing the indulgence—some magnifying the generosity of the government! The Associated Press anticipates the wishes of the War Department and the taste of its constituents, by exaggerating the "luxuries" of "Jeff.'s" new and commodious quarters, and by telling how "grateful" he is, for the "clemency" which has been extended him. The readers of its despatches—ninety out of a hundred of them —are quite sure that it is indeed a case for gratitude; and that the "traitor" ought to bless his stars, that after having committed the awful crime of entertaining and fighting for the constitutional opinions of himself and his fathers, he was not drawn and quartered for it, in Faneuil Hall, after morning prayer, on Lord's day following his arrest.

We have said nothing of Dr. Craven's book, for the simple reason that there is nothing to say. It belongs to what is called the "sensational" class, and although apparently written with good feeling and in good faith, was still prepared for its market and seasoned accordingly. It relates several conversations which must have been very strangely misunderstood—especially that in which Mr. Davis is made to express an impossible admiration of General Hunter. Indeed there is an appearance of paraphrase in many of the reported observations of Mr. Davis which does not inspire confidence. The melo-dramatic account of the fettering, and of the bearing of the prisoner on the occasion, we think we are safe in asserting to be very fanciful versions of what really occurred—though nothing, of course, could exaggerate the unmanly and revolting details which the simplest recital would furnish.

MR. BANCROFT AS A HISTORIAN.

IF the historic muse has really an abiding place among us, it was a sad day for her when the weak and servile political pamphlet of Mr. Lothrop Motley, at the beginning of our recent strife, was rewarded by a diplomatic mission. Upon Mr. Motley himself the effect has been alike unfortunate and obvious. We have had "the insurrection of the slaveholders" introduced into the History of the United Netherlands, and Parrott guns and Monitors paraded, *à propos* of the siege of Utrecht. The greenback miracles of Mr. Chase have been made to overshadow the diminished glories of finance under Philip the Second, and "the eternal setting of that great popular hope, the United American Republic," has furnished the background of a picture, painted from the rupture of a Dutch alliance. Nay, we hold it an indisputable fact, that the style, the tone, the very taste and grammar of Mr. Motley's recent volumes have been visibly corrupted by his evil political communications. But the sins he has committed, himself, are nothing to those of which he has been and is likely to be the cause in others; and if we are right in believing that we owe the volume of Bancroft's History before us, in some sort, to his example and the

pleasant prospect of Berlin in the distance, we hardly know to how much of sackcloth and ashes he ought not to be condemned. It is due to Mr. Motley, however, to say, that his deflection from history into partisanship surprised every one. It would not be easy for Mr. Bancroft to surprise any body. He has been a party politician almost all his life, and has known the savor of many flesh-pots. What he calls the *History of the United States* has been, from the beginning, a sort of proclamation of himself, and its philosophy has always taken a recognisable Bancroftian direction. He systematically reverses the ordinary historical process. He does not deduce the present from the past, but goes back to the past to justify or condemn the present, according to his theories or uses at the time. Instead of showing how the mighty skeleton grew and was developed, he frames it, in his cabinet, from some bone of his day, which he assumes to be a genuine fossil. Where the results of the hour seem to him to be good, or he desires to make them seem good, he fabricates premises from the Revolution so as to make his sequences logical. If they seem to him, or he would have them to seem, evil, he reconstructs the principles of the past, so as to prove that we have fallen away from them. If the late civil war, for instance, had been an unsuccessful movement in the interest of consolidation, he would have made his History demonstrate that the vital and controlling idea of the Revolution was the establishment and perpetuation of State Sovereignty. As it was State Sovereignty, however, which took up arms and was beaten, he is eloquent and urgent in demonstrating that the merger of colonial distinctions into one absorbing union was the real principle and

purpose of our separation from Great Britain. In fine, his cloud is either a whale or a weasel, according as the taste may run at court when he invites us to look at it.

There is a personality also, in Mr. Bancroft's turn of thinking and writing, which is singular. He assaults a doctrine as if it were a personal enemy, and lunges at a historical character who has been buried a century, as if he had quarrelled with him the night before and owed him a private grudge. We remember to have heard him once, in a public lecture on the Spirit of the Age, belabor the venerable author of Rasselas with such ferocity and personality that a hiss went through the galleries, and an elderly gentleman who seemed to have Miss Pinkerton's reverence for the author of the *Dixonary*, stamped down the aisle in noisy disgust. Yet all that he charged to Dr. Johnson as cause for execration was his toryism—what the *Memorial Address* on Lincoln more severely describes as placing one's self "in conflict with the will of Providence." Of that will, of course, it is always to be understood that the Lincolns and Bancrofts are the exclusive interpreters and blessed messengers. In view, then, of the characteristics which we have described, nobody, we repeat, will be surprised at the contents of Mr. Bancroft's ninth volume. It is undoubtedly the worst of the series, but not a whit worse than the best of them would have been, under similar circumstances and with equal inducements. To make these understood, it is necessary to enter into some detail. At the beginning of the Confederate war, Mr. Bancroft was far from orthodox. He did not exactly advocate secession, but he thought coercion unconstitutional, and was therefore opposed to it. Nay, more, he did not regard the

Southern movement with disfavor or consider it unjustifiable. We state his opinions in the moderate way in which Dr. Russell describes them in the thirteenth chapter of his *Diary North and South.* It appears that the noted correspondent of the *Times,* on the 19th of March, 1861, had the pleasure of dining at a friend's in New York, where he enjoyed the advantage of hearing the political views of several distinguished personages, his fellow-guests, among whom was Mr. Bancroft. Their opinions struck Dr. Russell as remarkable, and he recorded them at some length. "The result," he says, "left on my mind by their conversations and arguments, was that, according to the Constitution, the government could not employ force to prevent secession, or to compel States which had seceded by the will of the people, to acknowledge the Federal power. In fact, according to them, the Federal Government was the mere machine put forward by a society of sovereign States as a common instrument for certain ministerial acts, more particularly those which affected the external relations of the Confederation." . . . "There was not a man who maintained the Government had any power to coerce the people of a State, or to force a State to remain in the Union, or under the action of the Federal Government." Obviously nothing more disloyal, heretical, and wicked than this could have been suggested at Montgomery or Richmond. The idea that the best government in the world was a "mere machine"—an "instrument"—was something fearful to think of. It was the very quintessence of lese-majesty. Mr. Jefferson Davis is still under bail, to be tried as a traitor for entertaining and asserting the self-same notion. Between such doctrine and that of Mr. Motley's contemporaneous

pamphlet, lay the depths and the breadth of the sea. Between the Bancroft who avowed such treasonable sentiments, and the gentleman of the same name who delivered the *Memorial Address on the Life and Character of Abraham Lincoln*, before the "Congress of America," in February, 1866, there was a world of distance which Puck could scarcely girdle. In the course, therefore, of the five years which elapsed between the dinner in New York and the address at Washington, it will be perceived that our historian had an "unco lee-way" to make up. To get from the constitutional opinions which Russell has recorded, to those which the Address commemorates, required the strides of a giant. But Mr. Bancroft was equal to the emergency. The political philosopher of 1861, who thought that "the government could not employ force" against seceding States without a violation of the Constitution, was not ashamed or afraid, as the orator of 1866, to denounce Mr. Buchanan for declaring "that the sword was not placed in the hands of Congress to preserve the Union by force." The Southern movement, which the democrat had not regarded "with disfavor," the orator did not scruple to anathematize as "a rebellion founded on negro slavery." The "instrument," the "society of sovereign States," in the New York table-talk, became "America" in the Hall of Representatives. The "machine" which Mr. Lincoln had "run," instead of being the thing with the same humble name of which Dr. Russell had heard, was now "the great Republic," with "its providential place in the history of mankind,"—the "only daughter of freedom" "waging war for the liberty of all the nations of the world, for freedom itself," &c., &c. The wonders of this war which, in 1861, the "machine" had

no right to wage, were trumpeted, in 1866, with all the volume of an eloquence which knows no degree but the superlative. How "blood flowed like water" in "six hundred and twenty-five battles and severe skirmishes" which the "instrument" had no right to fight, was fully and pleasantly detailed; how "it streamed over the grassy plains: it stained the rocks: the undergrowth of the forest was red with it: and the armies marched on, with majestic courage, from one conflict to another, knowing they were fighting for God and liberty." All these "ministerial acts," and many more of the sort, the curious may read of, glorified, in any one of the twenty thousand extra copies of the Address, which the House of Representatives ordered to be printed.

Having thus changed sides,—at all events, to mortal eyes,—Mr. Bancroft, of course, felt that it would never do to leave any of his *impedimenta* with his old friends, now enemies. He had gone over, himself, and his history had to follow. Besides, he knew that his former heterodoxy was remembered by his new brethren, and that where there are more disciples than crumbs, a convert who is hungry has to give evidence of his calling and election, by works as well as faith. He knew, too, that in the temper of the times it was quite useless to write history for sale, as he did, unless he wrote what the market demanded. He knew that to pander to Northern vanity and passion, and build up Revolutionary foundations for the modern inventions of New England—in a word, to make history as it was wanted, and cheat the past into the service of the present—was the most acceptable and the shortest method he could adopt of becoming at once a classic and an ambassador. The volume before us is, we

think, the result of that conclusion, and, as we have intimated, of Mr. Motley's example and reward. An illustration or two will not be amiss.

Every one who knows anything of our revolutionary history, is aware of the feeling which from time to time was manifested in the Continental Army, against some of the troops and officers from New England. The shameless attempts of modern historians and lecturers in that quarter, to conceal the traces and evade the justice of this feeling, are equally notorious. The controversy between Lord Mahon and Mr. Sparks in regard to the letters of Washington, garbled for that purpose by Mr. Sparks, is of course familiar to our readers. Those who have taken the pains to read what Washington did actually think and write upon the subject, will remember how often, in the bitterness and sadness of despair, and with the fierce indignation of his own burning and unselfish patriotism, he denounced the trading spirit, the littleness, the cowardice, the mean cabals and interests, by which the troops in question so frequently imperilled the great cause. In the face of facts so generally known and incontestable, we confess our amazement at finding, on page 335 of the volume of his History now under review, the broad statement by Mr. Bancroft, that "it was on the militia of these (the New England) States, that Washington placed his chief reliance." Nor is this inconceivable assertion guarded by qualifications, of any sort, as to time, or place, or occasion. On the contrary, it is coupled with an observation ascribed to the British Commander-in-chief, that the New England militia, "when brought into action, were the most persevering of any in all North America"—the purpose of combining

the two statements being, of course, to perpetuate it as a historical fact, attested by the heads of both armies, that the troops from New England were the right arm of the one and the terror of the other. It is the misfortune of criticism, that its decorum has no language by which falsifications of the sort can be properly characterized. Happily, on the other hand, it is but seldom called to expose anything so gross. Mr. Bancroft did himself infinite injustice by not adding to it at once, that John Adams was the unswerving friend and stay of Washington, in the dark hours of doubt; that the Declaration of Independence was signed in Boston, and the sword of Cornwallis surrendered on Bunker Hill.

But the tribute thus rendered to the self-love of his section, was not regarded by Mr. Bancroft as complete without the sacrifice of a victim or two on the same altar. In making his peace, he was resolved to do the thing thoroughly. He was like the English wit, who, having made up his mind to swear to the Thirty-nine Articles, expressed his willingness to take forty, if necessary. His fondness for personalities, to which we have alluded, made it likewise especially agreeable to him to propitiate the New England feeling by personal detraction. Hence the multitude of controversies into which his present volume has led him, and of which the titles of the pamphlets at the head of this article will give the reader some idea. We cannot, of course, enter into these, but it is impossible thoroughly to understand what Mr. Bancroft is as a historian, without studying the character of some of them. The case of Joseph Reed, the Revolutionary President of Pennsylvania—at one time Secretary of Washington, at another his Adjutant General, and always deserving and

enjoying his confidence and friendship—is particularly illustrative. We allude to it especially, because it furnishes the most conspicuous demonstration of Mr. Bancroft's inconsistency, recklessness, bad faith and virulence. Reed, unfortunately for him as things now go, was one of those prominent officers who entertained and expressed the opinions which we have referred to, in regard to the New England levies. The historian Hildreth quotes from *Graydon's Memoirs* the following passage: "In so contemptible a light were the New England men regarded, that it was scarcely possible to conceive a case which could be construed into a reprehensible disrespect of them." Hildreth then adds, that "Reed, the new Adjutant General, shared this feeling to a certain extent, and made himself very unpopular with the New England troops." Mr. Bancroft himself alludes to the same subject, and to Reed in connexion with it, in a note to the sixth chapter of the volume under review. "A bitter and jealous rivalry," he says, "which the Adjutant General had assisted to foment, had grown up between the New England troops and those south of New England." A well known report, made by Col. Smallwood to the Maryland Convention in regard to the cowardice and misconduct of two Connecticut Brigades under his own observation at Kip's Bay, Mr. Bancroft assails, in the same paragraph, as "full of blunders and impossibilities." But the subsequent political prominence of Reed, and the slanders which grew out of the electioneering contests in which he was involved, afforded Mr. Bancroft an opportunity of attacking him, which the more modest civil career of Smallwood did not supply. It happened, too, that Mr. William B. Reed, the grandson and biographer of the Penn-

sylvania President, and one of our most able and justly distinguished public men, had continued faithful, during the war, to the political principles which Mr. Bancroft deserted. Mr. Reed is known and honored, now, as one of the few conspicuous citizens north of Mason and Dixon's line, from whom neither social ostracism, nor political pressure, nor professional sacrifice, nor personal peril, could force a single concession to the devilish madness of the hour. The exceptional courage and patriotism which established for him the reputation he now enjoys, of course rendered him obnoxious, in proportion, to the fanatics and, especially, the renegades, to whom his lofty position was a standing reproach. Nothing, consequently, could be more delightful to Mr. Bancroft, personally, or more in the line of his interest and purpose, than to visit on the ancestor the sins of the descendant, along with his own. In his History, therefore, and the Historical Essay with which he followed it, he assails President Reed with a malignity and coarseness which would be disparaging anywhere, out of the speech of an impeachment manager. In the History he deals with him as a "traitor," a "pretender," a "deserter," and a "coward." In the Essay he denounces him as a "vacillating trimmer," "tainted by duplicity," "shuffling, pusillanimous, and irresolute." The testimony on which he pretends to base such imputations is raked from the very sewers of post-revolutionary partisan falsehood and rancor. Nor does Mr. Bancroft scruple to aid it by false citations, false statements, and text-garbling. He calls into court, as a witness, the unknown author of a Hessian Diary, to prove that the Adjutant General of the American army had obtained a British protection for the purpose of deserting his country, and

suppresses the context by which the very diarist himself indicates his own disbelief of the slander. Those who are willing to fathom the depths into which Mr. Bancroft has dragged, not merely the decorum of history but the decencies of literary controversy, will find it interesting to accompany Mr. William B. Reed through the exposures which he mercilessly makes.

But this statement, damaging as it is, leaves half the story untold. In 1848, when the younger Reed gave the biography of his ancestor to the public, he very naturally sent a presentation copy to Mr. Bancroft, who was then Minister of the United States at London. It was not only a work of great literary and historical merit, but vindicated thoroughly the character and career of its subject, against whose memory the traditional irritation of old party strife was from time to time revived in Pennsylvania. No one knew better, at that time, than Mr. Bancroft, the merits of the controversy it referred to, for they were perfectly familiar to all who had occupied themselves with the annals of those days. The judgment which he passed upon the work was therefore rendered with deliberation and full knowledge. He expressed it in these words:

I must renew to you my thanks for your most valuable volumes. They form the most important contribution to American Revolutionary History which has been made for many years. In performing a duty towards the memory of your ancestor, you have not failed to do a good service to your country. Let me say again how much I am obliged to you for your volumes, partly as a token of your regard, still more as an American and a student of our history, happy in everything that illustrates it so elaborately and so well.

Very truly,

Your obliged

London, February 1st, 1848. GEORGE BANCROFT.

It is difficult to believe that, after the lapse of twenty years, a gentleman so far advanced as Mr. Bancroft towards that period of life when even party-passion might wait upon the judgment, could be found engaged in vilifying the revolutionary patriot, the vindication of whose memory he then pronounced, not only a "duty," on the part of his descendant, but "good service to the country." Still more incredible would it appear, that he should now denounce the very work, of which he spoke so eulogistically, as the mere "outpouring of family vanity," and of "a passion to create an undeserved reputation" for an unworthy ancestor. Yet he not only says and does these things, but says and does them with a total abandonment of shame. "The most important contribution to American Revolutionary History which had been made for many years," in 1848, he now fairly spits upon, as "a series of mis-statements and perversions," and vows, with uplifted hands, that "no book that he has ever read contains such libels on Washington's conduct and ability."

Such glaring and passionate inconsistencies and contradictions can have no explanation short of that which we have given. In a normal condition of the public mind and temper, their author, with all his recklessness, would not have risked the consequences of their exposure. Even as things are, we doubt whether he would have ventured upon the misrepresentations of 1866, if he had remembered what he wrote a score of years before. He must have learned, with the rest of us, in the venerable *Pantheon*—the mythological *vade mecum* of his school-days—that the eighth of the Muses is sometimes called "Polymenia, from her excellent memory; and therefore the invention of writing history is ascribed to

her, which requires a good memory." A moral apophthegm, almost as old as the daughters of Jupiter and Mnemosyne, suggests a large class of persons, not always historians, to whom a like good memory is equally indispensable. Mr. Bancroft doubtless knows where to find the maxim in Quinctilian, and would not, we imagined, have knowingly exposed himself to its inevitable application, as historian or individual. What renders the thing chiefly shameful, too, is his undoubted knowledge of the fact that President Reed retained, until his death, the affectionate confidence of Washington, and that the illustrious Greene, his bosom friend and companion, who knew, better than all others, the ingoings and outcomings of his heart and life, denounced, in 1783, with unmeasured indignation, as simply "infamous," "ridiculous," and "wicked," the very imputations which Mr. Bancroft is now endeavoring to palm on the world and perpetuate as history.

It would, unhappily, be too easy, if space permitted, to give further illustrations of Mr. Bancroft's spirit, in the particular to which we have especially alluded. His unwarranted reflections on the conduct of General Greene are probably due to the fact—for they can be ascribed to nothing else—that this noble soldier of the Revolution earned his chief laurels with Southern soldiers, upon Southern fields, and, after the sheathing of his sword, went down to dwell and died among the grateful people of the South, who loved him and whom he loved well. Surely, if there was any one, after Washington, among the heroes and patriots of that day, whom a historian of the Revolution should have hesitated even to think of with anything but admiration, it was Nathanael Greene—so brave, so full of wisdom and conduct, so stern

in discipline, and still so kind, so simple, so true. Yet one of his descendants is called on, at this time, to defend him against charges of despondency, murmuring, neglect of orders and dereliction of duty—charges made without the shadow of reasonable pretext and seeming to flow as from a mania for detraction and reproach. Those who feel an interest in the details of what is scarcely a controversy—for the truth and the argument are all upon one side—will hardly be surprised to find that Mr. Bancroft is convicted of his usual trespasses:—mis-statement, omission, garbling, perversion, and suppression.

The flings and sneers at other Revolutionary Generals, which pervade the volume, can scarcely be ascribed to any other cause than an incapacity to avoid saying what is disagreeable, when an opportunity presents itself. Heath, Putnam, Wayne, Schuyler, and Sullivan, successively pass under the lash. The reflections upon them, for the most part, amount to nothing in substance, but are put in a way to wound the feelings of their descendants and suggest disparagement which is not openly and frankly ventured. Schuyler is the only exception, for a lack of personal courage is indirectly and most wantonly ascribed to him. We are half inclined to think that Mr. Bancroft meant no harm by this; and that, as Mr. George L. Schuyler says of him, "he cannot appreciate how deeply the epithet of cowardice shocks the sensibilities of honorable men." Indeed, it is quite clear from his correspondence with Mr. Schuyler, that he thinks the descendants of the General ought to be content to have their ancestor handed down to posterity as a coward, on one page of the history, in view of the fact that he is well

spoken of, "as an officer and a man" in other parts of the same. The truth is, that Mr. Bancroft, like the most of his political and philosophical co-religionists has a much larger and more distinct idea of the dignity of the human race than of that of individuals. The grandeur of the whole quite blinds him to the pettiness of his details; and he never stops to think that a great Republic cannot be made out of mean people. The nobility of Man in general absorbs him, until he loses sight of the want of it in himself and those around him. The process is about the same as that by which we have seen philanthropy, of late, entirely extinguish charity. Besides this, Bancroft the historian, is quite incapable of being separated, or of separating himself, from Bancroft the demagogue. There is a "oneness" about them, as he would say, which admits of no putting asunder. Schuyler was what Washington called a "gentleman," a word which Mr. Bancroft does not entirely understand, and is obviously sorry that the Father of his country committed the mistake of using, to designate the class from which he desired to officer his army. In fact, he tries to explain it away, as if he were in a canvass for Washington's election to a city office in the Bowery. He alludes to Schuyler's "social position," "as if," says the General's descendant, "that were a drawback to his merit." Can Mr. Schuyler shut his eyes to the fact that with the school to which Mr. Bancroft belongs it is really a demerit? The sentiment which they cherish, and which Mr. Bancroft writes to flatter, does not tolerate, at least in its public utterances, the idea that one man is a gentleman and another is not. It is not to be endured, in their scheme, that one man shall be better than another—unless perhaps he is in the army. Black

and white, civilized and savage, gentle and brutal, we are all equal; and it is flying in the face of Providence to administer the affairs of the world on any other theory. "Social position" is a social crime, bringing "privileged classes" along with it. The Declaration of Independence is to be our only "compendium of political wisdom," as Mr. Bancroft informs us it was Mr. Lincoln's. Down then with all distinctions between men, and let us usher in the new Millennium, when the lion and the lamb shall lie down in the same mire, and every freeman shall of right be as bad as his brother! Is not this substantially the principle on which we have been nationally acting for the last seven years, and on which there is an even chance that we may continue to be governed, until the very corruption of its results may put on some hope of incorruption? Do we not hear the brutish tramp of the degrading doctrine, louder and louder every day, as it treads out the freedom, the refinement, the intelligence, almost the material life, of the Southern portion of our people, and strikes down with its hoof, the integrity, the morals, the truth, and manhood of the rest? What is the Congressional policy of to-day, but a policy of destruction and overthrow—a declaration of war against everything high and worthy in men and institutions? It is crushing the past into fragments, so that all men shall creep on their bellies alike, to search for its jewels in the dust. Of this policy Mr. Bancroft is a champion, and now desires to make his History the evangel. It is in the lowest spirit of such levelling that he sneers at the Constitution of Maryland, as framed in '76, because, in providing for the election of State Senators, it calls them "gentlemen." Three times, in four lines, (p. 267)

the grave historian has pilloried the anti-republican word, in commas inverted. What wonder that he should deem it an offence in Schuyler, to belong to the same dangerous and hateful class? Nay, was not Schuyler even worse than a gentleman? Had he not said (p. 373) "that one Southern soldier was worth two from New England?"

Passing from Mr. Bancroft's *sansculottisms* and personalities, to the perversions of political history which he seems equally to delight in, we find the case of the Maryland Constitution very much in point. It will be remembered that the cardinal idea of the History is the sovereignty of the people—not, of course, in the sense in which that principle lies at the foundation of all popular systems, and is recognized by all sound-minded people who live under them—but as the perpetual intervention of all the people in all the actings and doings of government, without check, restraint, or balance. We should do injustice to Mr. Bancroft's rhetoric, if we were not to give his own statement of his proposition. "In all the States," he tells us (p. 258), "it was held that sovereignty resides in the people: that the majesty of supreme command belongs, of right, to its collective intelligence: that royalty is the attribute of its reason: that government is to be originated by its impulse, organized by its consent, and conducted by its embodied will; that it alone possesses the energy out of which all powers flow forth and to which they return; that it is the sole legitimate master, to name, directly or indirectly, every one of the officers in the State and bind them, as its servants, to work only for its good." This, of course, is all very grand, and with the exception of a slight mystery in the process by which "royalty" becomes the attri-

bute of the democratic reason, we do not think it has ever been put as well, except in the memorable address with which Mr. Chuzzlewit was favored by General Choke: "We are a new country, sir; man is in a more primeval state here, sir; we have not the excuse of having lapsed, in the slow course of time, into degenerate practices; we have no false gods; man, sir, here, is man, in all his dignity. We fought for that, or nothing." But although the popular sovereignty is declared by Mr. Bancroft, in this sublime way, to have been generally recognized "in all the States," that gentleman, before he made the declaration, had already ascribed to the State of Maryland a departure from the identical great American principle. This was shown, he tells us, not merely by their classification of their Senators as "gentlemen," but by the fact that the persons so denominated were to be chosen for five years, by electors, and not directly by the people. "This is the most deliberate measure," says our historian, "which was devised to curb or balance popular power, and marks the reluctance with which its authors parted from their institutions under the Crown of England." Now, had Mr. Bancroft been writing in the interest of historical truth, and not merely to support his *parti pris*, it would, of course, have struck him, as a question for consideration, whether it was not he who had misunderstood and overstated the doctrines of the Revolution, instead of the people of Maryland who had fallen away from them. That one of the oldest and most patriotic of the States, whose institutions were laid upon the broadest and the noblest basis of civil and religious liberty, should have striven, in the new popular organization of its government, to guard against popular excess, was a fact which might have caused a less

adventurous theorist and partisan to doubt whether the Revolution was really the outbreak he took it to be in favor of popular despotism. That there was any "reluctance" on the part of the Maryland Convention to surrender their existing system, Mr. Bancroft knows to be absolutely false, in every other sense than that in which all men of conscience and reflection are reluctant to part, farther than is needful, from institutions which have made them prosperous and happy. John Adams may have signed himself "Brutus," when he wrote to his wife, and she may have written herself "Portia," or something else very Roman, in reply: but, when it came to practical government, it was not found that Brutus had any greater disposition than his less classical compatriots to surrender "the majesty of supreme command" to the "collective intelligence" in which Mr. Bancroft enthrones it. And the historian himself is perfectly aware—no one knows better—that the men of the Revolution, and those who survived it and put its real principles into practice, were as far as the antipodes from him and from the truculent Jacobinism and frothy trivialities which he ascribes to them. He knows that in the sixty-third number of the *Federalist*, the very characteristic of the Maryland Senate which he maliciously attributes to a weak hankering after the institutions of monarchy, was held up by Mr. Madison to the people of the United States, as an example to guide them in the construction of the Federal Senate. Its "salutary operation" was declared by that great statesman to have given to the Maryland Constitution "a reputation in which it will probably not be rivalled by that of any State in the Union."

Nor is it true, as Mr. Bancroft further states, that this "artificial arrangement," as he calls it, "pined from its birth and soon died away." The statement is as pure a fiction as anything in the *Amadis* or the *Morte d'Arthur*. The Senate of Maryland continued, for more than sixty years "from its birth," to be elected precisely in the manner which so much scandalizes Mr. Bancroft. An effort was made, in 1807, to popularize it according to his notions, but without success; and it was not until 1838 that the vote of the people, for the first time, was given directly for Senators. During the long period of its existence, the old Senate of Maryland was a model legislative body, and there was no pining or dying away, of any sort, in its career. Its seats were always filled by the ablest and best men of the State, selected often without respect to party, even in high party times. Nor were its members, at any time, the representatives or creatures of "the large proprietors of land," to preserve whose "political importance" Mr. Bancroft would have it that the mode of their selection was adopted. On the contrary, the most prominent and influential among them were professional men, of whom by far the larger part had risen to distinction and popular favor, without the aid of fortune or social position. In fact, a place in the Senate was an honor deemed worthy the highest ambition; and the reputation of the body itself was an elevating source of State pride. The change in its constitution was not made without many misgivings, and we believe there are few judicious people in Maryland who do not now regret that it was made at all. It was one of those false movements, by which the democratic party, essentially a State-Rights party in feeling and doctrine, has contributed so often

and so sadly to demolish the foundations of its own most cherished faith. All the assaults and efforts of consolidation, put together, have perhaps done less toward the obliteration of State pride and independence, than has been wrought by those who really cherish them most. By reducing the dignity and the importance of State offices and removing all the elements of stability, and often of respectability, which belonged to them, we have made them no longer desirable to aspirants after public station. Those who seek place, either as an object of honorable ambition or for the sake of its rewards, must needs look to Federal office; and the Federal arena, on that account, becomes daily more and more the place of their struggles and their hopes. The States have thus lapsed into comparative insignificance in men's eyes, and it is at the expense of their displacement from their allotted orbit under the Constitution, that we have gained the great republican triumph of governors and judges at half-price, and constables elected by the people. Mr. Bancroft was once a leader of the school under whose teachings all this and much more has been done. He now adheres only to what was worst in it.

But we must not leave the Maryland question, without adverting to another incident which illustrates, equally with the last, Mr. Bancroft's utter recklessness of statement. Not content with assailing the Maryland Convention of 1776, because of the provisions which it adoped for the selection of its Senators, he has something of fault to find with the Constitution of the more popular branch of the Legislature. As the Delegates were not called "gentlemen," and were to be chosen directly by the people, there was nothing left but

to attack the basis of representation. This, Mr. Bancroft (p. 265) accordingly does, after the following fashion: "The planters of Maryland," he says, "jealous of the growing weight of Baltimore, set an arbitrary and most unequal limit to the representation of that city." Now it happens—and damage the History as it may, we are bound to record the fact, for which the statute-book of Maryland is our voucher—that Baltimore was not a city at all until 1796, twenty years after the adoption of the Constitution in question. We are therefore safe, we hope, in assuming that the "jealousy" referred to, which operated so detrimentally to the rights of man, was at all events what a happy euphemism now designates as "premature." But even if Mr. Bancroft had applied his observations to Baltimore-town—which we have no doubt he will say that he meant to do—they would not still have been a whit less false. The village of that name was laid out for the county town, as late as 1730, and, at the time of the Revolution, its whole population, black and white, did not amount to more than between five and six thousand. Nevertheless, the Constitution of 1776 allowed its citizens two representatives in the General Assembly, which was half the number allotted to each of the counties. The statistics of the period are far from being exact, but the whole population of the State is estimated at about two hundred thousand when the war broke out. As there were only eighteen counties, it requires but a very simple calculation to demonstrate that the limit set to the representation of Baltimore was neither "arbitrary" nor "most unequal;" especially in view of the fact that the representation allowed to the town did not diminish the number of delegates granted

to the county to which it belonged. But Mr. Bancroft had before his eyes in the very section of the Constitution (Sect. 5) to which he refers, irresistible evidence that the conclusion he drew from it was wholly without warrant. Instead of anticipating the growth of Baltimore in "weight," the Convention obviously regarded the latter as likely to be diminished, for the section expressly provides what shall result to the representation of the town in case its population shall decrease; no similar provision being made in regard to Annapolis, which had equal representation with Baltimore.

Minute, and, at this day, trivial, as these details may appear, we have felt it proper to enter into them, not merely because they expose, in the only demonstrative way, the worthlessness of what Mr. Bancroft asserts as fact, but because they furnish a fair test of the value of his political deductions and of the candor and respect for truth with which he draws them. We have illustrated these by examples taken from the history of Maryland—not because that State is alone in presenting such, but for the reason that Mr. Bancroft seems to have dedicated himself, with particular solicitude, to the falsification of her historical record. In one place, not yet referred to, (p. 170) he sneers at her Convention for "chiming in with the timidity of Lee." In another, (p. 392), he speaks of "the slaveholders on the Eastern Shore" as "disaffected." Yet again, (p. 170–199), he charges the whole State with a weak readiness "to renounce the Declaration of the 4th of July for the sake of an accommodation with Great Britain," and alleges that the Convention so "expressly voted in November." The vote to which he refers was that of the 10th of November, by which the Convention, while re-asserting its determination to make war

for its liberties, and authorizing the delegates in Congress to join in forming a Confederation and making foreign alliances therefor, nevertheless empowered them "to concur with the Congress or a majority of them, in accommodating our unhappy differences with Great Britain, on such terms as the Congress or a majority of them shall think proper." It contained not one word or suggestion of surrender, or timidity, or unmanly compromise, and there is not a shadow of authority anywhere for the intimation or suspicion, that the people of Maryland, at any moment of the contest, ever dreamed of surrendering the independence they had declared, upon any other terms than the absolute and guaranteed security, to all the colonies as well as to themselves, of the rights and liberties to protect which they had declared it.

Those who reflect on the feeling which recent events have engendered against Maryland, in the quarter which Mr. Bancroft's history was written to exalt and conciliate, will not be surprised at his attempt to brand her people as aliens to the great principles from which the Revolution sprang. How far he participates, personally, in the animosity to which he panders, will sufficiently and disgracefully appear by the passage in his *Memorial Address*, which informs the world that Mr. Lincoln was compelled to travel through Maryland "at midnight, to escape assassination." To believe that Mr. Bancroft thinks this true, would demand credulity enough for

> "*quidquid Græcia mendax*
> *Audet in historiâ.*"

Let us add yet another illustration to prove still further that we are not unjust to him.

The first chapter of the History is a sort of prose lyric concerning the Declaration of Independence, and embraces a florid narrative of the manner in which that remarkable paper was received by the various colonies. It is a well known fact that on the sixth of July, 1776, and before they had heard from Congress, the delegates to the Maryland Convention, then in session at Annapolis, had adopted a declaration of their own—a noble document, in which the grievances of the colonies were ably and manfully set forth, and the unalterable resolution of the people of Maryland was announced, to maintain the common freedom of themselves and their brethren. This declaration contained the following passage:

"Compelled, by dire necessity, either to surrender our properties, liberties and lives into the hands of a British king and parliament, or to use such means as will most perfectly secure to us and our posterity those invaluable blessings: We, the Delegates of Maryland, in Convention assembled, do declare that the King of Great Britain has violated his compact with this people, and that they owe no allegiance to him," &c.

The following is the version which Mr. Bancroft gives of this bold and patriotic proceeding (p. 32):

"Before receiving the declaration, the Convention of Maryland, on the sixth of July, yielded to the 'dire necessity' of renouncing a king who had violated his compact," &c. It is not easy to imagine anything more petty, or in a historian more criminal, than this perversion; and nothing could better illustrate Mr. Bancroft's favorite system of giving apparent truthfulness to his narrative by the introduction of quotations, which he at once converts into false witnesses by changing

their position and connexion. "Is it not written," said Cardinal Cheverus, jocosely, to a theological bore, who plied him with ill-joined passages from Scripture; "Is it not written that Judas went and hanged himself?" The answer was of course affirmative. "Is it not also written, Go thou and do likewise?" Mr. Bancroft's logic is the same, precisely, without the wit. In the identical chapter in which he misrepresents, as we have shown, the action of the Maryland Convention, he perpetrates the same trick, with the same *animus*, in regard to the contemporaneous action of South Carolina. The assembly of that State, he tells us, (p. 36), "while they deplored the 'unavoidable necessity' of independence, accepted its declaration 'with unspeakable pleasure.'" It is needless to say that the record will exhibit South Carolina as deploring nothing but the unavoidable necessity of making war for the freedom she vowed to defend. Such regrets are foremost always in brave hearts, and only they deride them who are strangers to the manliness which prompts them. Mr. Bancroft understands much better the huzzas which were shouted when the Declaration was promulgated in Rhode Island, (p. 36)—huzzas "for free trade with all the world, American manufactures, and the diffusion of liberty over and over the world"—trade first, and then liberty.

The slight sketch which we have sought to give of the political tone of the volume before us, would be imperfect, were we to omit a passing allusion to the unionistic phase which the events of the Revolution are made to present in it. Take Mr. Bancroft's word for it, and we should be left without a doubt that taxation without representation was a

mere subordinate affair in the minds of the colonists, and that a grand republic, spreading from ocean to ocean, "the only daughter of freedom," &c., &c., was what was contemplated, in Boston, when the good people there bedecked themselves as "Mohocks" and tumbled the tea into the harbor. Painful experience, of late, has shown us, that when the champions of latitudinous freedom and dominion, in that quarter, betake themselves to war, they still keep up the tradition of converting themselves into savages, in order to wage it like Christians. But it by no means follows that because they did this recently, when they struck for what they denominated Union, they were so wildly bent on Union when they first appeared as Indians. Our fathers, North and South, were sensible, practical, brave men, not dreamers, nor pretenders, nor phrase-mongers. What they wanted, was to regulate their own internal affairs, and not to be bound by legislation in which they had no voice. They were not strong enough to secure this without banding themselves together, and therefore they made common cause. Yet, in doing so, they were careful to go no farther than was reasonably necessary for their purpose. The idea of joining hands to encompass the continent and sing hosannas to liberty, equality, and fraternity, never entered their imaginations. One of Mr. Bancroft's *bravuras* about the rights of man would have astonished them almost as much as some of his facts. It is sheer romance, then, for that gentleman to be perpetually quoting the words "United States of America," which were now and then loosely and rhetorically used before the Confederation, as serious proof that the people of the Revolutionary epoch considered the United Colonies, "one

common country"—an "America," as the *Address* calls our now solidified "society of States." What the existing Constitution of the United States may amount to, in justifying such a conclusion as to the purpose of its framers, is quite another question which we have no intention here to discuss. Doubtless, if we live long enough, we shall have a volume or two of the History to consider, one of these days, in which that point will arise. There was an ancient writer of epics, whose name we forget and whose works are fortunately lost, who produced a poem on the Siege of Thebes, but died soon after finishing the twenty-fourth book, which only brought the besiegers before the city. Mr. Bancroft has, consequently, good authority for his apparent resolution to publish a score of volumes before he reaches the United States, of which he professes to be writing the history, and which the present volume of five hundred pages brings only about a year and a half nearer. We are bound to confess that the past would not justify us in anticipating what he may say when he gets there; and it is on this account that we make no contest with him now, save on the simple present question, whether union and nationality were, in any sense, the motives of the Revolution.

On this point, we insist that all his philosophy and declamation are pure rhodomontade, directly in the face of the facts which even he cannot warp his narrative sufficiently to conceal. Indeed, in view of the careful limitations and conditions which the statesmen who signed the Declaration of Independence so studiously incorporated into the articles of the revolutionary Confederation, in order expressly to exclude all possibility of State absorption, it is hard to realize the

daring pertinacity with which Mr. Bancroft ascribes to their work the very reverse of their real idea. It is the more audacious, when page after page of his book is dedicated to depreciation of the very men who organized the Confederation, because of their alleged inability, from narrow-mindedness and prejudice, to comprehend the great principles of "cosmopolitan expansion." Rutledge is sneered at (p. 50,) for the wisdom which made him foresee, in what was called bending to "the good of the whole," the ultimate subordination of all the colonies to "the government of the Eastern provinces," whose "low cunning" and "levelling principles" he thought certain to secure an "overruling influence in council." What the experience of to-day proclaims to have been rare political sagacity in the far-sighted Carolinian, Mr. Bancroft, naturally enough, derides as "morbid distrust." But upon Dickinson, whose plan of Confederation he calls an "anarchical scheme," he empties the vials of wrath and rhetoric. "The farmer of Pennsylvania," he says, (p. 46,) "like the statue of the fabled child of the morning twilight, welcomed the coming sun with music, but stood silent and motionless during the heat of the day. He was not to be found when the militia regiment of which he was colonel, began its march. He followed it, on horseback, as far as Trenton; but his nerves were so much shattered, that after resting there a day, he finished his journey to Elizabethtown in a carriage." A motionless Memnon from Pennsylvania, riding on horseback to Trenton in the uniform of a colonel of militia, and making the rest of his stage in a Jersey wagon, with his nerves shattered, is not a pleasing or congruous piece of historical statuary, we admit, and could only be chiselled

by the hand of a master; yet we do not see, for all that, why his notions about a confederation must needs have been the worse, for his singular journey or his matin song; and we only give what is written of him, to show what Mr. Bancroft is capable of saying about the departed Confederators, for the sin of their opinions. He is forced to admit that "the spirit of separation" inspired their work, (p. 435): that every change in Dickinson's anarchical scheme "only darkened, more and more, the prospect of that energetic authority, which is the first guaranty of liberty." He charges that they were "misled by the principle of resistance to power," which, he says, "belonged to the past." (p. 437.) He pronounces their scheme "but the reflection of the long cherished repugnance to central power, a reminiscence of the war-cries of former times, not a creation for the coming age." (p. 50.) He declares that "the country, which had broken with the past in declaring independence," "went back into bondage to the past in forming its first Constitution." (p. 49.) He avers that "preconceived notions, and the never-sleeping dread of the absorption of the States, interfered with the vigorous prosecution of the war" (p. 57); and yet he insists, after all this, with a solemnity which almost surpasses comprehension, not only that "the people" desired nationality all the while, but that the Confederation was an "effort at forming a general union," (p. 650,) though it failed; that Congress, in proclaiming it, "proclaimed that republicanism may equal the widest empire in its bounds;" and that, by the clause which "secured to the free inhabitants" of each of the States "all privileges and immunities of free citizens in the several States," the Confederation, "gave reality to the

Union," (p. 447) and "constituted the free inhabitants of the different States one people." (p. 448.) What more it would have done, if its executive power had been stronger, we leave to be imagined by those who have seen what such power could do in our day; commending them, at the same time, to Mr. Bancroft's statement of what constituted its weakness then. "The executive power," he tells us, "vested in the independent will of thirteen separate sovereign States, was like many pairs of ganglia in one of the inferior articulata, of which part may press to go one way, and part another. Yet through this chaotic mass the rudiment of a spinal cord may be traced." (p. 450.) We do not know that we are sufficiently versed in political anatomy and physiology to understand this precisely; but, inferring from it, that the Confederation, in Mr. Bancroft's opinion, was wanting in what the gentlemen of his views now call, more familiarly, "backbone," we cannot but sigh for the unvertebrated days of the ganglia—inferior articulates that we are!

We abstain from adding further counts to our indictment, not from lack of further offences to prosecute, but because the task would really be endless. We conscientiously declare our conviction, that there are not two hundred pages, in the whole of Mr. Bancroft's volume, which do not severally contain something unworthy or untrue. He does not, of course, assert that a battle was lost or gained which was never fought, nor does he describe the British fleet as commanded by De Grasse. But he never loses an opportunity to color or misstate a fact which is disagreeable to him, or to insinuate, in a phrase, what he would not dare to utter as a proposition. Nor does he suffer any man to escape a libel or a sneer, whose

character is in the path of his prejudices, or whose opinions are at war with his philosophy. The Revolution, in fine, is his cuttle-fish, which he pricks with his pen, just as an older philosopher was wont to open his oyster with his sword. Nor is his literary amber at all unworthy of what he embalms in it. A more abominable style, for a historian, it would require the most perverse ingenuity to invent. Affected, stilted, pretentious, meretricious and hyperbolical, it sounds as if swaggering Thraso spoke it through a tragic mask. Being a sciolist, Mr. Bancroft assumes great precision of learning. Being a pedant, he affects literary grace. He is wholly destitute of imagination, but supposes himself to be full of it, because he revels in what the older grammarians used to call "figurative syntax." Altogether without profundity of thought, he fancies that he outpours it in a profusion of abstract expressions, and Germanisms ill translated and worse understood. Without a solitary glimmering of the true dignity of history and of those who write it as it should be written, he has a majesty of dominion about him which reminds one of Sancho at Barataria, and scatters dogmas around with the conscious grandeur of Dr. Blimber. Of what his rhetoric is equal to, we have already given an example, *in re* Memnon. That however, is but a trifling specimen. What is to be thought of such a passage, in a grave and serious narrative, as the following (p. 415), on the death of Fraser: "Never more shall he chase the red deer through the heather of Straith Errick, or guide the skiff across the fathomless lake of central Scotland, or muse over the ruin of the Stuarts on the Moor of Drummossie, or dream of glory beside the crystal waters of the Ness."

Doubtless, as matter-of-fact, Fraser will never do any of these things, for he has been dead almost a century; but why should the historian of the United States sing a coronach over him, at this time of day, for the mere purpose of retailing these scraps from a guide-book? How can any one treat a writer with gravity, who, desiring to inform us (p. 60) that the Declaration of Independence was the work of all and not of one or of a few, supposes that the statement is made clearer or better by his adding, that it was "just as the sunny smile of the ocean comes from every one of its millions of waves?" What can be made out of a grand description of the immortality of the people, which tells us (p. 272) that "its waves of thought, following eternal laws, were never still, flowing, now, with gentle vibrations, now, in a sweeping flood?" It requires all the self-possession of the calmest natural philosopher, to remember, under the influence of these fine words, that the "eternal laws" by which the "gentle vibrations" and the "sweeping flood" are ruled, are those of our inconstant satellite—that the ocean, in fact, is moon-struck, like the rhetoric. What do we learn, except that Mr. Bancroft would seem learned, from being told (p. 436) that "a new form of political life never appears, but as a growth out of its antecedents, just as in nature there is no animal life, without a seed or a spore." Nobody, we presume, ever supposed that a new form of political existence can grow out of what comes after it, any more than a father can be the son of his child,—and we dare say, there will be some hypercritical readers, who may be disposed to doubt, besides, whether the connexion of spores with animal reproduction, at all, is much more

scientific than their use, by way of political illustration, is necessary or wise.

Such examples of Mr. Bancroft's manner of writing might be multiplied *ad nauseam*, but we prefer to leave their further discovery to the research of the reader, contenting ourselves with referring the curious to the description of Charles James Fox's style of argument, which they will find on p. 149. Mr. Bancroft has obviously wreaked himself upon expression in preparing it, and his admirers will, no doubt, regard it as quite equal to anything in St. Simon or Macaulay. The remarkable process by which the English orator is made to grasp an idea; hold it; turn it over and present it; then dwell on it; next hammer it, till it is annealed like steel; then hit it, over and over, on the head; then drive it, like a nail, into the minds of his hearers, and finally retire from these complex and multiplied performances, in the capacity of a wrestler "when he was beaten by the majority"—this wonderful process, we repeat, gone through in a single sentence, will tax the comprehension of all who have not witnessed the most celestial gymnastics of Japan.

But what boots it to dwell upon these things? We might well console ourselves for living in times when such galimatias is sold for literature, if we were sure that the graver delinquencies which lie beneath its surface would meet, when dragged to light the honest indignation and resentment they deserve. This, we are sadly sure, they will not. Mr. Bancroft understood his audience, before putting on his buskins, and he has spoken what he knew the crowd that heard him would applaud. What does he care if only the judicious grieve? The time has gone by, he knows, when falsehood

was a disgrace. Our generation has become "practical," and truth and honor stand aside for what is profitable and expedient. We desire results, and what produces them is good. Mr. Bancroft leapt into the very pit when he delivered his *Memorial Address*, and yet he found his Berlin at the bottom. After the *Address*, the History was of course. Every base coin in it may be nailed to the counter, and he will be none the worse in reputation on that account. Those whom he flatters will not upbraid him for the sins he has committed on their side. He will rather be an oracle to them, and they will wonder and rejoice that he should have invented so rarely. When he and they look each other in the face, it will be but to demonstrate that blushing has passed away among the arts that are lost. The function of the dead past is only to "bury its dead," and why should not the present make capital out of their memories, as well as compost from their bones? Mr. Greene writes from Utopia, when he says, "Woe to the nation that has no rebuke for the rash hand or the irreverent tongue!" He forgets that he is vindicating his ancestor before a nation whose own hand is rash, and whose own tongue has forgotten reverence. Shall a people go through the mockery of honoring great names, does he think, when it has razed to their foundations the works builded by those who bore them? And this it is which makes deplorable the prestige of men like Mr. Bancroft. The sorrow is, not that they are prostituted, but that society welcomes their prostitution; not that they are false, but that society accepts and honors their falsehood. It is the shame of society, and not their shame, that is of evil omen. There have been bad men and bad teachers always, but society was safe, so long

as it shut them up in its moral lazar-houses. When it makes them its high-priests, and spreads its garments and palm-branches for them to tread on, those who love it may begin to despair. We surrender ourselves to no such unmanly pessimism, as the belief that the demoralization of to-day, and the triumph of those who feed it and feed on it, are the end-all of the efforts which our fathers made, to establish institutions for us on the basis of regulated freedom. Sooner or later, the time must come, when the truth and the right will have their glorious resurrection, and be radiant once more, in the smile of Him who made and blessed them. In those better days, when the calm minds of happier and wiser men shall scan the perverted story which we here dismiss, they will not restrain their wonder at what it discloses. They will see it announced, by the accepted Historian of the great American Revolution, that the fear of centralism, the distrust of power, the jealousy of standing armies, the vigilance which was held to be the price of liberty, in 1776, were all antiquated prejudices and delusions, the senseless war-cries of a dead and barbarous age. They will find it proclaimed, as the principle on which our regenerated republic is to rest, that 'energetic authority is the first guaranty of liberty,' and that power ceases to be greedy or dangerous, in proportion as its empire is extended and ignorance and brutality are entrusted with its exercise. They will not be surprised that such doctrines were advocated by the beneficiaries and the flatterers of power; but they will surely be amazed that the people, whose future was to be cast into the outer darkness of such a despotism, did not hiss its mercenary sophists into silence and shame.

BARNUM AND MRS. STOWE.

The Life of P. T. Barnum. Written by Himself. Redfield: New York. 1855. 1 vol. 12mo.

Sunny Memories of Foreign Lands. By Mrs. Harriet Beecher Stowe, author of "Uncle Tom's Cabin," &c. Boston: Phillips, Sampson & Co. New York: J. C. Derby. 1854.

LITTLE as these books may be worth, in themselves, they are as Ormus and Ind, in view of what they signify. Like all works of their class, they of course owe something of their success to the art and mystery of publishing; but they nevertheless supply an actual, existing demand, and they indicate, pretty fairly, its nature and extent. If we may look to the importation of silks and brandies as evidence of our progress in luxury and intemperance, it is hard to understand why the prices we pay for our moral and intellectual raiment and stimulants, and the quantity and quality of them both that we consume, should not avail equally, in their line, among our national statistics. Unhappily, the rule applies with too much truth and force in the present instance. The books before us might be buried in some corner-stone, with the coins of the day and a lithograph

of President Pierce (as the custom is), to be dug up, two centuries hence, and they would tell a truer and fuller story then, in their way, of the morals and taste of this our country and generation, than all the Bancrofts of after days could contrive, from the most mouldy and respectable records. There are Barnums in the historical, as well as in the menagerie department, and the world is fast finding this out, as it gets older. The centuries to come being still wiser than we, in this particular, would know that they could understand us better, from seeing the things that we had bought and relished, than from all the formal and express memorials we had thought fit to consign to them, as our story. They would see our features reflected in the objects of our taste, but would not be sure that the truth was told in the annals we had concocted. Yet, multitudinous as the considerations are which the volumes before us suggest, as types of our day and people—the limited scope of this magazine permits us to touch but few of them. It requires some self-denial, we confess, to keep within our narrow and legitimate range—for not only are the symptoms of public distemper which the success of such works must display, invaluable for the purposes of a moral diagnosis, but the fact of their being exposed to the world for money, invites a liberal application of surgical science and the most expanded freedom of hospital treatment.

Mr. Barnum has one merit—that of perfect, nay, ostentatious frankness. He has no scruple about admitting that he is an impostor, because that is precisely what his biography is written to show. Having made a fortune by false pretences, he is not only willing to confess the fact, but has the

professional pride of a juggler, in showing his audience how the tricks were done. Perhaps the state of the case may be better described, by saying, that having been paid for cheating, he is now glad to explain, for further pay, the details of his *modus operandi*. Mrs. Stowe's work is not, in form, a biographical sketch, but it is, in fact, a series of involuntary photographs. She is perpetually placing herself in such lights, as to leave her likeness on the wall, in spite of her. She thinks, in her innocence, that she is recording sunny memories of other people, when the very sun itself is all the while engaged in tracing memories of her. In the midst of her portraits of lords and ladies, quakers and presbyterians; among her sketches of saints and statesmen, pictures and statues, glaciers and donkeys, is the perpetual presence of her own self-satisfied countenance—radiant with the joy of her own greatness, and rapt with the wisdom of her own twaddle. Her book, therefore, is better than a biography, because it is an unconscious record—a likeness, taken when she does not know that she is sitting for it and has not put on her cap of maintenance. Like Miss Kilmansegg's jewels, it is a "solemn bequest to vanity"—not the less precious (or vain either) because of its solemnity.

The most natural inquiries suggested by both these productions—and not a whit the less by one than by the other—are—why were they written?—why are they read? The booksellers' returns afford a very satisfactory reply to the first question. On the title pages of *Sunny Memories*, we find the expressive words, "Fifteenth thousand," and we doubt whether our copy is from the last edition. Of his biography, the illustrious proprietor of Iranistan has probably sold so

many copies, that he has ceased to keep count. Certain it is, that Irving and Prescott, Bryant, Cooper and Poe, all together, in all their lives, have never reaped from their works one-half the harvest which the showman and the strong-minded woman have gathered in one or two seasons. How has this happened? What can it mean?

There was a time when people must have lived lives before they could sell them. It was necessary for them to have been something, or to have done something, which the world knew and valued, as a model or a warning, before they could persuade or induce the world to buy or read their stories. Milton thought, in his grand way, that a book was the author's life, as it were, treasured up. Now it seems that everybody's life is treasured up to made a book. In the great poet's deep idea, the book was the expression of the life—not the tale of its incidents, but the result of its experiences—not a chronicle of the mind's processes or the heart's sufferings, but what the mind knew and was, and what the heart felt and had become, through all and after all. As things and people now go, instead of dropping the trifles of their trifling lives into the wallet where time puts alms for oblivion, both men and women deposit them in a sort of charity-box or savings-institution, whence they come forth, after many days, as a benefaction to mankind or a fortune for the owner. It is quite unimportant who the individual is. Precisely as we any day may see the most unmeaning, vulgar or atrocious faces, looking out from miraculous gilt frames in the windows of the daguerreotype shops—just so may we find the same manner of people staring stupidly or wickedly at us in biographies, from booksellers' shelves. Dead or alive, great

or little, famous or infamous—the author of a code or the man who was hanged under it—every one has his equal chances of a "life." If the subject be famous, he will be taken to have deserved it. If infamous, curiosity will justify it. Quite as large a crowd will turn out for a public execution as for a state-funeral or a great man's welcome—and the fellow whose business it is to carry around the hat, cares for very little but the number of his contributors.

Barnum and Mrs. Stowe! What should this world, or any world in the whole "plurality," care for them—that they should make it the depositary of their individual confidences and personal experience? What is the inventor of the "woolly horse" to this visible, diurnal sphere, more than the "woolly horse" itself? Why should this vast continent, annexed or unannexed, concern itself about his father, his uncle or his grandfather, and the recital of their knavish tricks and clownish nonsense spun out into detail, to show that he, their representative, has taken imposture by descent? And Mrs. Stowe—with all the reverence of Sir Hudibras for the shadow of her shoe-tie, as a mother in Israel—of what pleasure or profit should it be to the nineteenth century and to a shrewd, intelligent, practical, self-respecting people, to know the details of her praise-hunting and tuft-hunting abroad, and how she was made giddy and absurd by it? She had the good fortune to write a book—a very effective one of its sort—but still one that would never have passed beyond the honors or profits of a magazine story, if its heroes had been white, any more than her friend "Miss Greenfield" (of whom she writes so much), would ever have been called a "swan," but for the

luck of being a "black" one. Yet Mrs. Stowe's book did catch the world's applause. It chimed in, at a critical moment, with the views and interests, and the excited feelings of a powerful party at home, while it flattered the prejudices, deceived the ignorance, strengthened the convictions, and inflamed the fanaticism of communities abroad. But, more than all, the cause it advocated breathed no little of that music

> "to whose tone
> The common pulse of man keeps time,"

and the book went directly to the public mind through the public heart. It was magnified at once into a great work, and Mrs. Stowe, of a sudden, became a famous writer. The book was translated into all the languages known to the learned blacksmith. The *bœuf gras* at Paris was christened "L'Oncle Tom," and hosannas to "Madame Béchare" resounded among the Alpine snows. The lady was fêted at Stafford House, and all turtledom was in commotion to meet her at the Lord Mayor's. Every day awoke her to breakfasts, lunches, dinners and soirées, with all manner of intercalary feasts and refreshments, well seasoned with complimentary speeches and made digestible by evangelical doctrine. Exeter Hall outdid itself in her behalf, and even went so far in the tumultuous expression of its Christian sympathy and admiration, as to frighten the fair beneficiary and require the interposition of the police. Purses, pens, cups, inkstands, and all conceivable varieties of heterogeneous liberality, were showered upon her without stint. Fifty pages, in small print, at the opening of her first volume, contain the record of the pleasant discourses that were made to her, and that

she or the worthy professor, her spouse, was eloquent enough to deliver in reply. In fine, never was good woman—except Jenny Lind—so much magnified and exalted. Only Barnum could have procured for her a more universal ovation, by dexterous advertisements and politic falsehood, than that which she obtained for herself by the simple process of misrepresenting her own country and echoing foreign abuse of it. Accustomed as we are to wonder at nothing that is done by the fanatics whose temporary idol Mrs. Stowe became—we confess ourselves unable to repress our indignation and disgust at the harangues which she prepared for Mr. Stowe to read, and those to which she permitted herself to listen. If what she told and heard of her country was false, it would hardly be decorous to say of her what she deserves. If it was true, there is scarcely less reason to reproach her for the melancholy vanity, which made her welcome and repeat, because mingled with her own praise, what she should have shrunk from in silence or tears, if she had an American or womanly spark in her soul.

As a book of travels—the work of a mere woman, not an apostle—the "Sunny Memories" are mediocrity beyond redemption. They illustrate or adorn nothing that is old, and they tell us nothing worth knowing that is new. Of her noble and clerical hosts and hostesses, and all the high and mighty and sainted people that she met, she writes in the "God bless everybody!" tone of Fitzgerald in the *Rejected Addresses*. In regard to some of the literary celebrities she communicates peculiar and late information. Mr. Hallam, she tells us, wrote the *Constitutional History of England*, and Macaulay reviewed it. Dr. Lushington is "a

Judge of the Admiralty Court, *that is to say, of the law relating to marine affairs!*" Milman "was, for many years, Dean of Westminster," and Macaulay is "celebrated as a conversationalist." In respect to poetry also, she has her private stock of ideas. Milton—who ought to be quite Puritan enough for anybody—"pains" her by the impiety of "introducing second-hand pagan mythology, into the very shadow of the eternal throne." She mourns in devout sackcloth and theological ashes, over his heathenish and "evident imitations of Homer," in some parts of the *Paradise Lost!* Pope and Dryden, likewise, are far too pagan for her taste, which finds nothing in the English language to equal "in melody and majesty" Dr. Watts' paraphrase of the one hundred and forty-eighth Psalm. How she manages to overlook, in such a connection, the genius of Sternhold and Hopkins, is matter of wonder to the uninitiated mind! Upon art, her criticisms are akin to her notions of poetry. Rembrandt, she says, "is like Hawthorne"—not, of course, in his features or complexion, nor in having been consul at Liverpool—but in his "sombre richness and mysterious gloom." She might more appropriately have said "like the author of Uncle Tom"—in his management of *chiar'-oscuro*—his charming contrasts of black and white. Rubens she likens to Shakespeare, "for this variety and vital force"—a compliment Rubens would have valued extremely, in view of the explanation she adds to it, that "some of Shakespeare's finest passages explode all grammar and rhetoric, like sky rockets—the thought blows the language to shivers!" A dangerous painter, Rubens, to have in one's neighborhood! Why did not the philanthropy of "Madame Béchare" com-

municate to the Emperor, the existence in the very Louvre, of such infernal machines as his works must be? Correggio's sacred pictures suggest to her "Tom Moore" writing a prayer-book—and she finds in Murillo's Conception (which she calls the "Assumption of the Virgin"), a want of "earnest" and religious feeling—such a want as she discovers in reading Pope's *Messiah*. In reference to music, her views are startling. "Nearly all the music before Christ," she quotes from her brother, "was in the minor scale, and since Christ, it has come to be in the major." From this sublime allusion there is but one step to a "*salon musicale*" and the Princess Czartoryski, with Frankomm playing upon an instrument one hundred and fifty years old, "which cost six thousand dollars!" Frankomm completed the impression of wonder and delight which the lady had evidently derived from the sight and music of an instrument worth so much money—by informing her that he had read Uncle Tom, and when he read it he exclaimed—"this is genuine Christianity"—"*ceci est la vraie Christianisme!*" The reader who is familiar with French will not set down this blunder to the Reverend Mr. Beecher, though the same paragraph tells us that he had interpreted between Frankomm and Mrs. Stowe, for it would be unkind to suppose that he did not understand the language he was translating. It was obviously a delicate compliment on the part of M. Frankomm, who knew that a sympathy for the rights of women was a weak point of the lady (and perhaps of the Professor), and therefore endowed Christianity, for the nonce, with the feminine gender!

We have yielded, it may be unduly, to the temptation of following Mrs. Stowe through her work, and yet we have

not done so altogether unadvisedly. We have desired to let the reader see for himself, that over and above the points of similarity, to which we shall presently advert—we have done the lady no injustice, even in a literary point of view, in presenting her to the public on the same platform with Mr. Barnum. Only one thing we may add, and that is—that the *Sunny Memories* have put an end, for ever, to the idea of Mrs. Stowe's being a woman of genius. She has done herself and the public poetical justice. She has dispelled the "Uncle Tom" illusions on that point, so utterly, that they can impose on nobody any more. She has herself settled it, conclusively, for all time—that putting aside her philanthropy and her philo-melanthropy; taking the black faces, the cabins, and the clanking chains out of her melodramas; knocking from under her reputation the props of sentimental sympathy and party zeal; she is but a strong-minded, commonplace, elderly lady—very fanatical and very oracular—full of spiritual pride and earthly vanity—very fortunate in having made a great deal of money, and very inconsiderate of her fame, in not having gone home to live on it, without troubling the world again. A more universal and total collapse than her glory has undergone, in England, we do not remember to have witnessed in the annals of literary explosion. In her own expressive phraseology, she has "blown" herself to "shivers."

With the literary merits, or the detailed incidents, of Mr. Barnum's biography, we do not intend particularly to concern ourselves. On the whole, his book is written a great deal better than might have been expected—certainly in less bad taste than Mrs. Stowe's. This grows out of the fact, we

imagine, that he writes about nothing but what he understands, and does not attempt to make himself out much wiser or grander than he is. When he goes to Court, with Tom Thumb, he knows that he is sent for as a showman, and does not pretend to be on intimate terms with the Queen. Mrs. Stowe, on the contrary, is altogether ignorant of the fact that she is a phenomenon on exhibition, and imagines and rejoices that she is made much of, because of the delight which the aristocracy take in her society. She writes about princesses and duchesses, as if she had gone to school with their mothers, and had called them, from their infancy, by their Christian names. When Mr. Barnum's talk is of mermaids, he is as much at home as the painter in the Epistle *ad Pisones*. Mrs. Stowe, upon her part, is by no means so well prepared to discuss the Venus of Milo. He is quite content to have made himself rich by the singing of Jenny Lind, and foots up his columns of dollars and cents without the slightest affectation of æsthetics. Mrs. Stowe, on the other hand, is in a perpetual struggle between the finite and the infinite, "the outward" and "the inward"—between the philosophy of Kant, which she does not comprehend, and the cant of her own philosophy, which no one else does. In plain, downright English, they are both humbugs—Barnum a mountebank—Mrs. Stowe a transcendental pretender. His selfishness is sordid, petty and palpable—hers, quite as active, and though draped and veiled, not at all more respectable. Her aims are much higher than his—the harm that she does is of course more general. He openly violates the moral precepts to be found in every spelling book; the corrective is therefore simple and always at hand. She mystifies the less obvious

principles of public morality and private duty, and her assault is the more dangerous, for being indirect and evangelical. He cannot injure many, whom the temptations of gain might not corrupt without him. She strikes at the large and most impressible class, who insist upon thinking, without knowing exactly how. He is content to have a calling—she sets up for a "mission." The sins of his disciples, it is probable, will lie mostly in advertising and swindling—those of hers, in preaching and conspiring. His book may be the text and temptation of bankrupt or fraudulent circus-riders: her teachings are those which, in New England, make sects and traitors.

But, with all these differences in kind and degree, there are two points upon which the rivals are in harmonious accord—the value of religion, and the lofty consciousness of possessing it. "I have been indebted to Christianity," says Mr. Barnum, "for the most serene happiness of my life, and I would not part with its consolations, for all things else in the world. In all my journeys as a showman, the Bible has been my companion, and I have repeatedly read it, attentively, from beginning to end." Every important incident of his virtuous career is coupled with an acknowledgment of "the mercy of God," and the very last words of his biography are—"the Kingdom of Heaven." It is, as if some saint or dying martyr were reminding us, that

> "Only the actions of the just
> Smell sweet and blossom in the dust!"

Mrs. Stowe's professions are of a more ambitious character. She is, herself, Gamaliel—she sits at no one's feet. Of the

world's "progressive men" she rather inclines to Calvin. His burning of Servetus was, "like the witch persecutions of New England," "a fragment of past absurdity"—but by no means "a personal peculiarity" of his! "Luther," she says, "was the poet of the Reformation (how unjust to Dr. Watts!) and Calvin its philosopher. Luther fused the mass, Calvin chrystalized!" "Calvinism," she adds, "in its most essential features, will never cease from the earth, *because the great fundamental facts of nature* (meaning sin and sorrow, we suppose), *are Calvinistic, and men* (to say nothing of women) *with strong minds and wills always discover it!*" Mrs. Stowe has discovered it—the conclusion is obvious! But she does not rest satisfied with this dainty morsel of doctrine. "M. Alfred de Musée" (which we suppose is the Uncle Tom-mish for "Musset"—though it is the French for Museum) "M. Alfred de Musée, the first intelligence of the age" observes to M. Belloc, who is painting Mrs. Stowe's portrait—"Say nothing about Uncle Tom!" We should admire M. de Musset if he had confined himself to this very natural request—but he did not. He added: "There is nothing like it. It leaves us all behind—all, all, miles behind!" M. de Belloc hastened to apprise Mrs. Stowe of the fact, and corroborated the truth of it, himself, by assigning the reason—"*There is more genuine faith in it, than in any book!*" This, the lady publishes herself, bodily, along with M. Frankomm's certificate, already referred to, that Uncle Tom is "true Christianity!" Being, thus, miles ahead of the first intelligence of the age—having more faith than ever was written, and being the author and proprietor (copyright secured) of true Christianity, in the concrete—

what wonder that Mrs. Stowe should go forth preaching and to preach? Who shall dispute her orthodoxy, or rebel against her infallibility? How shall so superior a being—so endowed and so inspired—who has got the start of the majestic world so far—how shall she be questioned by common people? Shall she not have her own will and her own way, and shall not Stoweism, like Calvinism, be for ever hereafter as "fundamental" a "fact of nature," as earthquakes and predestination? Whatever may be Barnum's superiority in other particulars—in the apostolic capacity he must hide his diminished head. There is but one chance for him, and that consists altogether in "the modesty" alluded to by Mr. Hodgson, the chairman of the Uncle Tom meeting at Liverpool, "which shrinks instinctively from unnecessary publicity!" On that point, certainly, he has somewhat the advantage. He is not modest—at all events, not to the extent of shrinking. We have Mr. Hodgson's word for it, that Mrs. Stowe is.

Yet we confess that we prefer Barnum as a preacher. He desecrates the Scriptures, it is true, by connecting them and their holy lessons with himself and his life and practices—but he does so, only now and then, and in a vulgar and palpable way. In the main, he is content to be a showman—to make the pulpit an adjunct to the caravan. The Bible is his text only—it is Mrs. Beecher's sermon, and she is always in full canonicals, ready to expound. One of her many reverend adulators, in a speech which she republishes in full, is eloquent upon her gift in using and applying the language of Scripture. This is her pride and her profanity—and so—while Barnum, in his Sunday discourses (when the Menagerie

is closed) is contented with an allusion to Moses, Mrs. Stowe has the air and the unction of perpetually writing Deuteronomy. She goes through the Louvre, judging the Scripture-pieces by her concordance, and she works up every travelling glimpse at a mountain, into a vision vouchsafed to her from the Apocalypse.

But we have said enough for our space and our purposes, and we must needs go back to one of the questions with which we started—why do the American people buy and read these books? It is easier to ask this than to answer it. The one is the shameless confession of a common impostor, who has taken the money of the public by downright falsehood and vulgar fraud. The other is a record of spiritual inebriety—an illustration of what vanity, fanaticism, greed and success can do with a narrow and heated mind. Fear God and cheat your neighbor—is Barnum's moral. Believe in yourself, preach to your neighbor and take up a collection—is Mrs. Stowe's. Lie and swindle as much as you please—says the voice from Iranistan—but be sure you read your Bible and drink no brandy! Slander your country and curse your brother, unless he be black, says the oracle of Andover—there is no harm in any thing, if you quote the Scriptures and know you are inspired! Are the public so misguided, so perverse, or so blind, that they cannot or will not understand such things? Is there sufficient sympathy with trick and untruth, among us, to make men tolerate Barnum? Is there enough lack of taste, and sense, and rational religion, to render the rhapsodies of Mrs. Stowe acceptable to the religious and educated masses? We are pained to admit that these inquiries suggest answers which startle us. We are afraid that Barnum

is tolerated, because our sensibilities are not nice—because success may render almost any thing tolerable to us. We fear that the triumph of Mrs. Stowe is the echo of what is worst in her—that fanaticism is popular—that Pharisaism is reverenced—that presumption passes for authority—that unintelligible phrases are taken for philosophy and strong-minded twaddle goes for eloquent piety. In this country, people rarely buy what they do not want or like, and they do buy Barnum and *Sunny Memories.*

We make no apology whatever to our readers for treating these matters without much ceremony. We see no propriety in any forbearance towards such books or people. Nor do we conceive that we are bound to any especial reverence for what they would call things sacred and things serious. Cant is always solemn, and if solemnity is to strike men dumb, cant reigns of course, supreme. We should be sorry, indeed, if it could be rightly counted irreligious, to scorn and denounce the mockery of religion by a quack-salver, or to expose the book-writing elect, in their profitable process of self-canonization. The press only can undo the evil which the press does, and the remedy must be suited to the disease, in kind as well as quantity. Ridicule is certainly no test of truth, but in the main, in human things, it is a pretty fair test of what is ridiculous—and there are some sins which can be reached by it only. Offenders, like Barnum, may be kept in order by the statute against false pretences—transgressors like Mrs. Stowe are harmless only when laughed at.

MARYLAND AND MARYLANDERS.

THE flippant and spiteful article which we copy from the London *Athenæum*, bears the familiar ear-marks of Mr. Hepworth Dixon, the editor of that journal. Mr. Dixon is well known in the world of letters, and until the publication of a recent and extremely discreditable work of his, called "Spiritual Wives," was regarded as a very proper person. His championship of William Penn, against the judgments of Lord Macaulay, gave him considerable reputation, of a broad-brimmed sort, and he has probably been led by exaggerated partisanship in that matter, to asperse on this occasion the character and motives of the founder of Maryland. It is the trick, perhaps indeed the instinct, of a certain class of hero-worshippers, to break or deface the images of all heroes but their own; just as a like class, in ordinary life, are always ready to depress the reputation of their neighbors, by way of giving comparative elevation to themselves. But this consideration does not account for the petty and peculiar grudge which is manifested in the article before us, against the Maryland, and especially the Baltimore, of to-day. We can see how Mr. Dixon, the historical controversialist, in reviewing a book of scraps from the early annals of our

State, might naturally develop the bias of a rival advocate, against the little colony which planted the cross of Christianity and toleration on the banks of the St. Mary's. But we cannot understand why, on no better provocation, he should have set himself to sneering, from his tripod, at a living people, who are no more to Penn than he to Hecuba. If he had remained with us long enough to learn anything about us, the case might have been different, for we are very far from thinking that a traveller is bound, by social or personal considerations, to suppress his honest and deliberate judgment, after observation, upon the characteristics of the places which he visits. But nothing could be more obvious than is Mr. Dixon's ignorance of all that pertains to us. With the adroitness of a practiced book-maker, he endeavors to conceal this, by affecting great precision and detail of statement in regard to our local and external peculiarities and landmarks. But his very effort to seem knowing furnishes the most conclusive evidence that he knows nothing. His prattle about the characteristics of Baltimore is simply ludicrous. He talks of "the frolic of its quays," which nobody, born here, ever heard of. He is oracular about the "dash" of its people, when those who know us and love us best know that "dash" is precisely what we lack, as a community. He burns with "the heat of its pavements," which a midsummer hour on Chestnut street would have taught him to be coolness, compared with the torrid zone of a Philadelphia sidewalk. Of the "dancing and dicing, the driving and drinking," in which he supposes us especially to revel, there is more in New York, in a day and night, than with us in a month, or, perhaps, six. Of "song," in which he

has it that we chiefly wrap our unlettered souls, we have as small a modicum as could be reasonably divided among three hundred thousand people. There is more of it, of a sort, that passes through a dozen Boston noses, than through the lips of our whole population. Nay, a single thanksgiving day or other devout occasion, in the New England metropolis, would supply more of Mr. Dixon's "decorous excess," and indecorous besides, than would sicken Baltimore for a fortnight. Nothing, in fine, could be more entirely absurd and unlike, than his notion that "plebeian Jones' Falls" divides our city into two parts, of which, like the twin peaks of Parnassus, the one is sacred to Apollo and the other to Bacchus. Indeed, were we to judge from inference only, we might fairly doubt whether Mr. Dixon was ever even the "guest of a week" among us. No man of his intelligence and opportunities, who had really seen the monument to Washington, would have exposed himself, we think, by speaking of it as a sort of estray from a neighboring cemetery. Any such person would have recognized it, in spite of its defects, as one of the noblest columns in the world—loftier and more massive than either of its classic prototypes, the columns of Trajan and Antoninus, and more impressive by far, with its magnificent position, than the great work of Wren, the only monument in London that compares with it. Certainly Mr. Dixon could have found no *cicerone* here, who conducted him, in good faith, to "the Armistead sculpture," as an object of local celebrity, or led him to the wharves as gay abodes of pleasure. But why waste words upon a traveller who writes of "perfect terrapin," in the singular number, and yet thinks he knows whereof he is writing?

The truth is, that Mr. Dixon came to America, with a purpose which there was nothing in Maryland to serve. He came to collect materials for a sensational book, and our "bright little capital" furnished none of the sensations that he needed. He saw but little of us therefore, if anything, and the fact is much to our credit. Of books about the United States, normally considered, the market was full, and our traveller, therefore, was hunting after something abnormal. He was in search of *isms*, of which, happily, we have none. He was tracing the development of what in New England, are called "ideas"—things which the healthy nature of our people loathes, and which we exorcise with bell, book and candle, as we would the Devil from whom they come. Our faults, short-comings, vices, if you will, have at least this redeeming trait, that they are natural. Our moral distempers are those of a constitution naturally sound and vigorous. There is nothing unmanly or unwomanly in the worst of our social traits or aberrations. Mr. Dixon, therefore, did not care to make diagnosis of our case. Pruriency, of which we are free, was absolutely essential to his discoveries, for he wished to write a book which he could sell as philosophical, and they who chose might buy as bawdy. This purpose he consummated in his "New America," and is now further carrying out, with great acceptance, in the more recent work to which we have alluded. Naturally, therefore, finding us unprofitable and unsympathizing, here in Maryland, he betook himself to more congenial localities, and oscillated chiefly between Massachusetts and Utah. His selected studies were polygamy at Salt Lake City, and "pantagamy" at Oneida Creek. He put the beastliness of Brigham

Young under one microscope, and that of Brother Noyes under another, making diagrams of what he saw for publication and sale. He visited familiarly the two saints in question and various minor evangelists of the gospel of free love. He dwelt in their "families," studied their agreeable habits and enjoyed what are, somewhat latitudinously, styled their "hospitalities." From the attractive contemplation of the piety and virtues which these disclosed, he naturally passed to the consideration of sundry cognate matters, affecting the "birth-rate" and the growth of the native population in New England. Of the result of his filthy investigations we have too much respect for ourselves and our readers to say more, than that he sorrowfully ascribes the disgusting developments of which he treats, to the example of his loved "Massachusetts, the religious centre of New England, the intellectual light of the United States."

We have written thus much of Mr. Dixon, not merely that our readers may know what manner of man he is and what his social criticisms are worth, but by way of tracing to their source the malicious prejudices of which the article before us is so full. Knowing nothing about Maryland or its people, himself, he but repeats what he heard in the society he frequented. He writes in London what they feel and think in Boston. The intellectual superiority of New England was, of course, not kept a secret from him, while he tarried in its "religious centre," nor could he fail to learn there, how the disloyalty and treason of Baltimore were the offspring of our ignorance and wickedness combined. It was, therefore, but a trifling effort at condensation for him to say, in a single phrase, that "Maryland is the least lettered of all the United

States," Kansas and Minnesota included. We ought to be thankful, in view of his admiration for the Mormon prophet, that he did not place us below the territories also. To a foreigner, free from the passions of our late unhappy struggle, it would never have occurred spontaneously to taunt our people with cowardice and upbraid them for despising "Northern scum." That our patriotism exhaled itself in singing "My Maryland," under the influence of champagne and in front of piano-fortes, would not have attracted a stranger's attention, even if it had been true. No intelligent traveller willingly occupies his mind with local or sectional jealousies and squabbles, any more than with neighborhood tattle or family quarrels. Only the eyes of the parties are open to these things; and the veriest gossip, from a distance, must needs dwell long among them to understand and repeat their scandal. On the present occasion, therefore, as perpetually during the war and since, Mr. Dixon is but the echo of the *Tribune* and the *Independent*. While siding with the South, as to the abstract right of secession, which it always maintained, the *Athenæum* has taken all its views of the right and wrong of the war from the Northern press; adopting all the products of its "preternatural mendacity" with fervor and faith. Under such circumstances, we have no reason to wonder that it should regard Maryland as deep in the slough of all sorts of despond.

The assaults of Mr. Dixon on the reputation of Lord Baltimore, are altogether unworthy of his real merit as a historical inquirer. Their malice is not only paltry, but without decent pretext of fact. And here, by the way, we must pause to smile at the amusing littleness of his suggestion

that "the good people of Baltimore pique themselves on having been planted by a lord, while the neighboring States were planted by commoners like Walter Raleigh or William Penn." We presume that no man or woman in Maryland ever thought for an instant of any difference between Lord Baltimore and plain George Calvert. To devote a third of a column to the distinction between an English peer and an Irish baron, would entitle any one, on this side of the water, to be recorded, at once and forever, in the Book of Snobs. At all events we can speak very confidently for Maryland in that regard. We are "lettered" enough to remember what the great humorist of *Vanity Fair* has told us of some of his countrymen, in speaking of the elder Mr. Osborne; and we cannot help thinking that Mr. Dixon has shown himself to belong to the same reverent class. "The old gentleman," says Mr. Thackeray, "pronounced these aristocratic names with the greatest gusto. Whenever he met a great man, he grovelled before him and my-lorded him, as only a free-born Briton can do. He came home and looked out his history in the peerage—he introduced his name into his daily conversation; he bragged about his lordship to his daughters. He fell down prostrate and basked in him, as a Neapolitan beggar does in the sun." Here, fortunately, we do not eat much of that sort of dirt. Indeed we have foolishly removed the coronet from our State arms, and put a meaningless, mock eagle in its place. We reverence the memory and deplore the fate of Raleigh, as devoutly as if we were Virginians or Englishmen. We think as well of Penn as a Pennsylvanian ought to think of him; and, we dare say, there are some easy-going people among us, who have read Mr. Dixon's book about him, and perhaps

adopted its conclusions. Whether Calvert was lord or commoner, or commoner made lord, is to us a matter of profound indifference. We are proud of his name and of him, only because we are proud of the immortal principles on which his colony was founded and which place the landing of the pilgrims from the Dove and Ark among the grandest incidents of human history. We are proud of his great charter as one of the noblest of the works that human hands have reared—the most glorious proclamation ever made of the liberty of thought and worship. Had he been Irish peasant, instead of Irish baron, we should reverence him perhaps the more, and certainly feel none the less the honor of descending from the good, brave men who made the precepts he bequeathed them a practical and living truth.

But to return to Mr. Dixon. Unless he had been greedy of an opportunity to gibe at Calvert, the little volume of Mr. Neill would hardly have suggested it. The author, though of Maryland descent, is not, we learn, of Maryland birth, and his book is, in no sense, a Maryland work. He has no great sympathy with Calvert, and appears, as far as we can judge, to regard the establishment of Methodism among us as the great event of our history. In this, of course, he may be right, and no doubt is sincere; but such is not exactly the Maryland idea, and its promulgation certainly is no cause for assailing Lord Baltimore. But, even if it were, it would be no excuse for Mr. Dixon's utter want of candor. To suggest, as he does, that Calvert's "chief merit" and the foundation of his great eminence and fortune consisted in writing "a hand which a child could read," is merely puerile in itself. But it becomes a good deal worse

than puerile, when seen in the light of one of Calvert's own letters, of which Neill has given us an extract (p. 41,) and with which Mr. Dixon was, of course, familiar. "The king once told me," he says, writing to the Duke of Buckingham, "that I wrote *as fair a hand, to look upon afar off*, as any man in England; but that *when any one came near they were not able to read a word.* I then got a dispensation to use another man's." Doubtless, in the days when "clerks" were not so plentiful as now, a plain good hand might lead a man to profitable place. But if Calvert's had been as legible as it was fair, it takes a bold historian to intimate that it could have been the "chief merit" in a man, who was the friend and confidant of Somerset, of Buckingham, of Bacon, and of Strafford, and whose mind and heart were equal to conceiving and producing the charter of the colony of Maryland.

Von Raumer gives us an extract from the secret correspondence of Tillières, then ambassador of France, with his court, which is worth, as an opinion, perhaps as much as Mr. Dixon's. "The third man," says Tillières, (writing in 1621,) "in whose hands the public affairs are ostensibly lodged, is the Secretary of State, Calvert. He is an honorable, sensible, well-minded man, courteous to strangers, full of respect towards Ambassadors, zealously intent upon the welfare of England; but, by reason of these good qualities entirely without consideration or influence."

Nor is there any foundation for the charge that the religion of Lord Baltimore was changed for the promotion of his fortunes. On the contrary, it is now a well ascertained fact, that he was inclined to the Catholic communion long before his adhesion to it was announced. Bancroft, who has cer-

tainly no Maryland prejudices, is clear in the conclusion that "preferring the avowal of his opinions to the emoluments of office, he resigned his place and openly professed his conversion." That he sold the seals of his secretaryship is no doubt true, though whether for £6000 or £3000 is not so certain. Mr. Dixon, of course, prefers the larger amount. But in thus disposing of his office he did no more than a customary and recognized thing, done every day, at that time, with the consent and approbation of the government, precisely as at this moment commissions in the army may be sold or exchanged, at the pleasure of the holder. The "story" is therefore in no wise "sad," as Mr. Dixon affects to call it, and even if the way in which Calvert thus became a lord were in truth, "dirty," it is quite manifest that it has nothing to do with the "way the colony of Maryland came to be planted" by him. That he "took advantage of his position at court to rob the Virginia Company of some of their best lands on the Chesapeake" is unsupported by historical evidence, as Mr. Dixon well knows, and the assertion is entirely of a piece with the stigma which he would affix to the colony itself, for its enforced and unwilling desertion of King Charles, when all England deserted him, and properly too, Mr. Dixon himself thinks. The judgment which Bancroft passes upon Calvert, was that of the contemporaries who survived him, and its brevity will excuse our repeating it. "Before the patent could be finally adjusted and pass the great seal," says that historian, "Sir George Calvert died, leaving a name against which the breath of calumny has hardly whispered a reproach. The petulance of his adversaries could only taunt him with being 'an Hispaniolized

Papist!'" Mr. Bancroft could not foresee the petulance of the *Athenæum*.

We have left ourselves scarce room for the few words which it still becomes us to say. If Mr. Dixon did really consort with people in Baltimore who fancied that Maryland was named after Queen Mary, surnamed "the bloody," we are not at all surprised at the opinion he expresses in regard to our intellectual cultivation. He should be glad to learn, however, that it was his misfortune, and not our fault. We are sure that some similar misfortune has influenced his verdict upon our social and personal characteristics. He evidently kept company here, which was not only bad in itself, but much given to evil report concerning its neighbors. No one with whom a traveller of his reputation should have associated, could possibly have informed him, that the men of Baltimore had patriotism only as a dinner-table fever, which passed off in "song" and words. No excitement, or discord of opinion, could have induced Maryland gentlemen to tell him, that there was lack of readiness, in those who differed from them, to uphold, with life and fortune, the cause which they espoused. The class at which he sneers was among the foremost in every battle of the war, and the bones of our young men—the best born and the lowliest—now rest, with equal honor, in every Southern grave-yard, which weeping piety and gratitude bestrew with votive flowers. Indeed the charm of our small society, so far as men have any share in it, is only frankness, and genial, cordial manhood. "Your true Marylander" is not only "impulsive," but his impulses are those of a gentleman, and he is not "quite harmless" when they are crossed. "The

freedom on which he most of all piques himself," is the freedom to which he was born—that which his fathers brought over when they followed Leonard Calvert, and which their descendants fought for when the colony became a State. The freedom of "The New America" stinks in his nostrils, mainly.

MR. NEILL ON THE MARYLAND CHARTER.

To the Editors of THE NEW ECLECTIC MAGAZINE:

GENTLEMEN:—In the July number of *The Eclectic* of 1868, you were good enough to publish an article, prepared by me at your request, reviewing a very spiteful paper upon Maryland and Marylanders, which appeared in the London *Athenæum* but a short time before, *à-propos* of a little work called *Terra Mariæ*, by Mr. Edward D. Neill. The writer in the *Athenæum* had been pleased to say, among other agreeable and equally creditable things about "the good people of Baltimore" in particular, that "they pique themselves upon being planted by a lord, while the neighboring States were planted by commoners like Walter Raleigh and William Penn." In commenting upon what I felt justified in styling the "amusing littleness" of this imputation, I used the following language:

"Whether Calvert was lord or commoner, or commoner made lord, is to us a matter of profound indifference. We are proud of his name and of him, only because we are proud of the immortal principles on which his colony was founded, and which place the landing of the pilgrims from the Dove and Ark among the grandest incidents of human history. *We*

are proud of his great charter, as one of the noblest of the works that human hands have reared—the most glorious proclamation ever made of the liberty of thought and worship. Had he been Irish peasant instead of Irish baron, we should reverence him perhaps the more, and certainly feel none the less the honor of descending from the good, brave men who made the precepts he bequeathed them a practical and living truth."

I had the gratification of seeing these observations of mine quoted and cordially adopted by a learned writer on the Early History of Maryland, in *The Southern Review* of January of the present year. They do not appear, however, to have met the approbation of the author of *Terra Mariæ*, whose want of sympathy with Calvert I took occasion to notice in the article referred to. Mr. Neill has since published a pamphlet entitled *The First Baron of Baltimore*, the special object of which appears to be to dislodge the founder of the Maryland colony from the high place which he has occupied, down to this time, in the Pantheon of history. In the "Introductory Note" to the *brochure* in question, he quotes that sentence from my article which is printed in italics above, and comments on it as follows:

"The following pages form the first part of a little work on the Founders of Maryland, which may be published at no distant day; and if their perusal convinces the unprejudiced that the original charter of Maryland does not contain a single provision for civil or religious freedom, still none the less to be honored are advocates of 'the liberty of thought and worship,' wherever and whenever discovered."

The remainder of the pamphlet is dedicated to what is supposed, by the author, to show that the charter of Maryland "recognized neither civil nor religious liberty." It concludes with extracts from the charter of Carolana (granted in 1629 to Attorney-General Heath), which are printed in

parallel columns with selections from the Maryland charter, and the deduction is drawn from their comparison that Heath's charter was "the document from which the charter of Maryland was framed" in 1632. Not only the merit, but even the originality of Calvert is thus sought to be impeached. The New York *Nation*, glad of the opportunity to uproot any Southern tradition or memorial of honor, unites with Mr. Neill (though without his courtesy) in assailing the proposition which I have italicized. It says that "no wilder talk than this has ever been uttered by any worshipper of the Puritans," and that "the parallel between the Carolina and Maryland charters, with which the pamphlet (of Mr. Neill) ends, proves the unoriginal character of the latter, and sets the question of freedom of worship at rest."

It was no part of my purpose, in reviewing the article from the *Athenæum*, to enter into an analysis of the Maryland charter, or particularly to canvass its merits. I referred to it, as the extract above cited will show, for the exclusive purpose of repelling a very puerile and foolish accusation, which would have made us ridiculous, if true. We were charged with being a generation of tuft-hunters, who were proud of our colony because a lord, and not a commoner, had founded it. The reply was, that we cared for Calvert only because of his works, and that he would have been the same in our honor and remembrance if he had been the humblest of men. We had pride in the great principles on which his government was founded, and in the charter he had prepared for it, and we were proud of him as a man, because we owed these to his virtues and wisdom. His rank was not a feather in the scale of our reverence. About the

charter there was no discussion, because there was no controversy; for the *Athenæum* had found no fault with it, and had made no question of its originality or its excellence. The broad language which I used, and which is now objected to, was, therefore, not controversially nor argumentatively employed, so far as concerned the charter itself. It merely described or expressed the high estimation of the charter and its author which led the people of Maryland to have pride in them both. Whether that estimate was well or ill founded, was not the question. The allegation of its existence, as an honest and genuine feeling and opinion, sufficiently repelled the charge which I resented; and the fact that it does exist—which I presume will not be disputed by anybody here—was all that I undertook to assert, or could be held to make good.

I trouble you with this much, not because I have any doubts about the historical justice of the praise which we accord, in Maryland, to the Founder and his charter, but because the criticisms to which I have referred are a sort of invitation to controversy on the point; and as I do not propose to engage in any, I think it due to you to show that I placed *The Eclectic* under no obligation to do so. I decline entering into such a discussion, not merely because I have neither the health nor the leisure to engage in it, but because the whole subject has already been dealt with, fully, by much more competent hands. Mr. Neill is probably not aware, and the *Nation* can hardly be expected to know, that the merits of Lord Baltimore and his charter, in every historical aspect, civil and religious, have been the subject of as thorough and exhaustive a discussion, in this State, as any seeker after knowledge or novelty could desire.

The second annual address before the Maryland Historical Society, delivered on December 9th, 1845, by Hon. John P. Kennedy, was a "Discourse on the Life and Character of George Calvert, the first Lord Baltimore." It was an able and instructive essay, full of learning and historical research, presenting, with much force of reasoning and illustration, its author's views upon the spirit and purpose of the Maryland Foundation. Considerable exception was taken to Mr. Kennedy's discourse, which was regarded by many, and especially by members of the Catholic Church, as unjust to Calvert in several particulars, but chiefly in those relating to his change of faith and the connection of his religious views and purposes with the establishment of the colony. A controversial paper, joining issue with Mr. Kennedy on these points, was deposited in the Historical Society by Dr. James Wynne, one of its members, and soon afterwards published. Mr. Kennedy's address was likewise reviewed with considerable acrimony in *The United States Catholic Magazine*, a periodical then published in this city by Mr. John Murphy, under the editorial direction of the Rev. Dr. White, and the Rev. Dr. Spalding, of Louisville, now archbishop of the diocese of Baltimore. The review was attributed (I believe justly) to the late Mr. Bernard U. Campbell, who was thoroughly versed in the early history of our State. It was written with so much cleverness, ability, and spirit, as to demand a reply from Mr. Kennedy, who accordingly published in the *Magazine* an elaborate and able defence of his positions. The controversy was closed by a full and learned article upon the other side from the reverend editors of the journal. In the ample and thorough survey of the whole field which this

discussion involved, I am not aware that a single point of importance was overlooked, which Mr. Neill has brought forward in either of his works. On the contrary, desiring to treat him with entire respect and courtesy, I feel bound to say, that I do not think he has contributed a single new idea or original illustration to the matter in hand. I have searched, in vain, through his observations, for a solitary novel fact or view, which would seem to justify re-opening the discussion. Indeed, the whole tenor of his productions would lead one to suppose that he had gone on, examining for himself, without sufficient previous general preparation to be aware of the extent to which the reading public was already acquainted with what he saw for the first time.

I should not do justice to the attention which our early colonial history has received under the auspices of the Maryland Historical Society, were I to overlook the admirable paper on "The Origin and Growth of Civil Liberty in Maryland," which was read before it in 1850 by Mr. George William Brown, as the fifth annual address. This was followed in 1852 by a learned and philosophical discourse on "Calvert and Penn," read by the Secretary (now President) of the Maryland Historical Society, Mr. Brantz Mayer, before the sister society of Pennsylvania, and published by the latter. To the showing and result of these various scholarly disquisitions, produced by men of very different religious and political convictions, each viewing the facts of history in the light of his particular opinions, those who share the feelings and views which I have ascribed to our people may be content to direct the minds of "the unprejudiced." They will undoubtedly find, as every reader of the

charter is presumed to know, that it contains no strings of political axioms or platitudes, such as are laughed to scorn in some of our helpless Bills of Rights, and that it proclaims no "self-evident truths," such as those with which the Declaration of Independence has set men together by the ears. But, interpreting its provisions by their practical and substantial import and result; by the freedom and toleration, the gentleness and accord, the humanity and charity, which grew up and flourished at once in its sunshine; we have a test of what it meant which cannot be gainsaid. Men may differ as to whether the higher merit belonged to the Protestant king who granted, or the Catholic subject who sought and prepared the charter. Some may believe that the glory of Maryland toleration was in the Act of 1649; others may agree with Mr. Kennedy, whom Chancellor Kent (vol. I, p. 646) has cited as authority for the opinion, that the charter itself is exclusively entitled to that honor. There may be good ground for the belief that Calvert did not regard democracy as synonymous with freedom or good government, and that he even entertained the odious notion of creating a colonial aristocracy as time ran on. There may be dispute, too, as to whether the provisions of the charter were not, in some regards, ambiguous, from intention, so as covertly to authorize the freedom and equality of religious opinion which some do not read in the letter of the text. All of these and like questions will be found treated with fulness, ability, and force, on both sides, in the essays to which I have alluded. But, amid them all and above them all, stands forth the glorious and ever-living fact, that when the seeds of the Maryland charter were sown in the virgin soil by the St. Mary's, what

sprang spontaneous from them was "the liberty of thought and worship." I have not imagination enough to persuade myself that this could possibly have happened, if the germ of that liberty had not been in them. We know what grew from the sand in which Puritanism planted its dragon's teeth, and we recognize in that growth and its increase, down to this day of its temporary predominance and savage riot, the hideous features of the monster whose teeth were planted. If the successors of Calvert had given to the earth what the Puritans gave, they and theirs would have reaped the same Devil's harvest, beyond a doubt.

Before leaving the subject, it is proper I should add a word or two concerning the discovery which the *Nation* welcomes, and Mr. Neill supposes himself to have made, in regard to the Carolana charter, and on the authority of which the originality and merit of the charter of Maryland are disposed of in so absolute and summary a way. Assuming, without investigation, that the charter of Carolana is correctly quoted in Mr. Neill's extracts, I must still regard it as very singular that he should have allowed himself to be led into so unjust an error by the mere fact of its partial resemblance to Calvert's work. It is undoubtedly true that the charter of Maryland did not take its present precise shape until 1631–2, and that the charter of Carolana was granted in 1629. But Mr. Neill and the *Nation*, I respectfully submit, ought both to have known that, except in its description of localities, the charter of Maryland is conceded to be but a transcript from that of Avalon, prepared by Calvert's own hand, and granted by King James, as far back as 1623—six years before Carolana was founded. Surely gentlemen who

are engaged in reforming the verdicts of history might be expected to remember at least its leading facts. That Mr. Neill's was a lapse of knowledge rather than of memory, is apparent from page 52 of *Terra Mariæ*, where he describes Calvert, in 1631 or 1632 (it is not clear which), as occupying his "leisure hours" in "writing a charter for a new plantation"—Maryland. He could not have occupied many of them if he had only to copy from Attorney-General Heath, or from himself.

And here let me remind the learned critics of the *Nation* that Carolana and Carolina were not, as they imagine, the same colony, but two very different plantations: the former chartered in 1629 by Charles I., the latter by Charles II. as late as 1663, more than thirty years after Lord Baltimore had been laid beneath the stones of St. Dunstan's. Whatever may have been the case with that of Carolana, we have the authority of Hildreth for saying, that at least the charter of Carolina, which the *Nation* supposes to be the same, was "principally copied from that of Maryland."

I venture to think, then, on the whole, that "the question of freedom of worship" is not yet altogether "set at rest," against Calvert, by the parallel columns of Mr. Neill, and that the entire demolition of a great historical name is neither so simple nor so instantaneous a process as your clever New York contemporary is pleased to consider it. Every one admits, of course, that if the interests of truth demand at any time a reversal of the judgments of the past, neither prejudice, nor prescription, nor sentiment, can be permitted to stop the way. It would be a sad thing indeed for many of us, in this generation, if we had not an abiding confidence,

that the merciless hand of the future will unmask hundreds of patriots and heroes, and unfrock scores of saints, who will go down to it, from us, in a glory of laurels and halos. But the interests of truth are not altogether in the charge of historical iconoclasm. The breakers of old images are too commonly seeking after pedestals for idols of their own; and experience admonishes us daily that the prejudice which seeks to pull down is as frequent, to say the least, and quite as rampant, as that which clings tenaciously and blindly to what it finds already set up. Men's passions strike backward as well as at the foe in front, and their theories and crotchets seem, in this, almost as wild and unreasoning as their passions. There is a pride of opinion in controversy which turns fiercely back from an obnoxious creed or dogma, to assail the memory of its departed and consecrated champions, precisely as the mob which has beheaded a king will not rest till it has scattered the bones of his ancestors by the wayside. Those, therefore, who cherish the integrity of history and the memory of the truly great and good who fill its honored graves, cannot scrutinize too carefully the moving causes of every assault upon their fame. Great names belong to mankind, and to diminish their number or dim their brightness is to impair the world's inheritance. Whether this be done in the spirit of wilful injustice, or unconsciously, under the influence of religious or political partisanship and bias, the result is the same. Society is deprived in either case of an example, a lesson, and a source of ennobling pride. To know what the world would lose by dropping the name of George Calvert from the list of its worthies, it is only necessary to read the judgment passed upon his character,

by one who certainly pronounced it under the influence of no local prejudices or religious sympathy. I quote from the first volume of Bancroft's History of the United States, page 244:

"Calvert deserves to be ranked among the most wise and benevolent lawgivers of all ages. He was the first, in the history of the Christian world, to seek for religious security and peace, by the practice of justice and not by the exercise of power; to plan the establishment of popular institutions with the enjoyment of liberty of conscience; to advance the career of civilization, by recognizing the rightful equality of all Christian sects."

Need I add the confirmation of this judgment, adopted from Grahame by the wise and philosophical Kent, in his lecture, "Of the Rights of Persons"?—

"Thus," he tells us, "to use the words of a learned and liberal historian, the Catholic planters of Maryland procured to their adopted country the distinguished praise of being the first of the American States in which toleration was established by law; and while the Puritans were persecuting their Protestant brethren in New England, and the Episcopalians retorting the same severity on the Puritans in Virginia, the Catholics, against whom the others were combined, formed in Maryland a sanctuary where all might worship and none might oppress, and where even Protestants sought refuge from Protestant intolerance."

Surely such a record as this is too noble and too well attested to disappear before a paragraph, or even a pamphlet. Surely we who have inherited and are proud of the "Land of the Sanctuary," are bound to see that such renown be dealt with fairly. When I turn to the works of Mr. Neill, and study the spirit in which he assails it, I am obliged to say he does not strike me as free from the bias which historical criticism cannot share and be just. When he accounts

for the small success of early Presbyterianism in the Maryland colony, on the ground (*Terra Mariæ*, p. 198) that this particular faith, as contradistinguished from that of other denominations, "has never yet been able to flourish in a land destitute of school-houses and where labor is not honored," we may respect his religious opinions, but it is impossible to say that they have made him liberal, or even fair. When, further on in the same volume (p. 220) he describes converts to Methodism as having previously fed on "the husks of religion," in contrast with the Methodist clergymen, who "seemed to diffuse its essence," it is hard to persuade ourselves that he is very tolerant of the folds in which his prodigals had thus eaten with the swine. He attributes "the first great religious awakening in Maryland" (whatever that may mean) to the influence of those "despised people," the Quakers; and deems it important to establish the superiority of their preachers over the Catholic clergy, by quoting the saying of "a Judge's wife," in regard to George Fox, that "she had rather hear him once than the priests a thousand times." (p. 136.) Possibly, if the lady had been cross-examined, she might have confessed that she would have preferred listening to a single sermon from anybody, to hearing a thousand—nay, even a dozen—from anybody else. Such cases, it is safe to say, are not rare, even among the most orthodox. On page 65 of *Terra Mariæ*, Mr. Neill repeats, after Winthrop, the familiar story of the Maryland sailors who visited Boston in the "Dove" in 1634, "for the purpose of cultivating friendly relations with the colony of Massachusetts." The men were confined to their vessel, under the rigid rules of the port, a great deal more

than was reasonable or convenient, and they were charged with having amused themselves, as they lay in the stream, by calling the Puritans on shore "the members," the "holy brethren," and other nicknames. It is further recorded by Winthrop, that they "did curse and swear most horribly." The Boston authorities, being unable to get at the alleged culprits themselves, determined, very characteristically, to lay hold of somebody else. They accordingly captured the unfortunate and innocent supercargo of the "Dove," who happened to be on shore, in their power, and forced him to give bail for the appearance of the scoffers who were not. We all remember how the descendants of the self-same Puritans used to practice upon the same principle, among us, during the late civil war, by arresting men's wives or sending their daughters "across the lines," when they could not find the husbands and fathers. Mr. Neill mentions the whole incident as an evidence of "the prejudices against Puritans," which, he adds, "were not entirely confined to the mariners of the Maryland Province." It would have been strange, he must admit, if the supercargoes had not shared them likewise. But is it not stranger that he should have forgotten to mention—what the New Englander, Hildreth, so frankly states—that the magistrates of Boston were not altogether moved to wrath by the bad manners or bad words of the Marylanders, but "were rather suspicious of a people, who '*did set up mass openly?*'" (Hildreth, *Hist. U. S.*, vol. I, p. 209.) In other words, they would not "cultivate friendly relations" with "Papists."

Such slips as these, and scores of others in the same direction, as insignificant in themselves and yet as important in

what they indicate, are quite sufficient, I think, to put "the unprejudiced" on their guard against Mr. Neill and the reviewers who indorse him, when they assume to pass sentence on George Calvert, his charter, his principles, his religion, or his colony. I am sorry that I must further qualify their estimate of Mr. Neill's liberality of sentiment, by referring to page 66 of *Terra Mariæ*, where he insinuates that Leonard Calvert protected his colonists in their religious scruples, not because he thought that toleration was right, but because, "had he oppressed them, they would have crossed the river to Virginia, where settlers were so much needed." If a good act did not deserve the charity of having a good motive ascribed to it, Mr. Neill might at least have assigned a plausible one. He certainly must have known, what Leonard Calvert could not have helped knowing, that there was no danger of a Puritan's running away from Maryland, to look for religious sympathy in Virginia.

NOTES.

[The notes and references below are reproduced from the privately-printed volume].

Page 3. From *The Southern Review*, January, 1867.
" 6, l. 8. See McCluskey's Pol. Text Book, 747.
" 13, l. 13. 2 Black, 674.
" 13, l. 26. 2 Black, 763.
" 19, l. 5. 2 Black, 673.
" 25, l. 25. 12 Wheaton, 19.
" 26, l. 1. 7 Howard, 44.
" 26, l. 8. 13 Howard, 137.
" 27, l. 8. 2 Black, 673.
" 28, l. 18. 1 Chitty's Criminal Law, 131.
" 33. From *The Southern Review*, July, 1868. The following titles of works were placed at the head of this review:—

1. *The American Revolution.* By George Bancroft. Vol. III. (Vol. IX, History of the U. S.) Boston: Little, Brown & Company. 1866.
2. *Memorial Address on the Life and Character of Abraham Lincoln, delivered at the request of both houses of the Congress of America, before them, in the House of Representatives at Washington, on the 12th of February,* 1866. By George Bancroft. Washington: Government Printing Office. 1866.
3. *Joseph Reed: A Historical Essay.* By George Bancroft. New York: W. J. Widdleton. 1867.
4. *President Reed of Pennsylvania. A Reply to Mr. George Bancroft and others, February,* A. D. 1867. Philadelphia: Howard Challen and John Campbell.

5. *A Rejoinder to Mr. Bancroft's Historical Essay on President Reed.* By William B. Reed. Philadelphia: Wm. P. Kildare.
6. *Nathanael Greene. An Examination of some Statements concerning Major-General Greene, in the ninth volume of Bancroft's History of the United States.* By George Washington Greene, author of "Historical View of the American Revolution," &c., &c. Boston: Ticknor & Fields. 1886.
7. *Correspondence and Remarks upon Bancroft's History of the Northern Campaign of 1777, and the character of Major-General Philip Schuyler.* By George L. Schuyler. New York: David G. Francis. 1867.
8. *Proceedings of the Massachusetts Historical Society.* 1866–1867. Published at the charge of the Peabody fund. Boston: Published for the Society, by Wiggin & Lunt. 1867.

Page 69. From *The Metropolitan Magazine*, April, 1855.

" 85. From *The New Eclectic Magazine*, July, 1868. The article from the London *Athenæum*, here reviewed, was prefixed to the review as it originally appeared.

" 93, l. 16. Von Raumer, History of 16th and 17th Centuries. Letter LXV.

" 95, l. 22. It was a Maryland company (Company A, 2d Maryland Infantry, C. S. A.) which carried ninety-five muskets into the great charge on Cemetery Hill at Gettysburg, and had but twelve of those who bore them to answer at roll-call next morning—its noble captain left dead on the field, and nearly all of its brave officers wounded beside him. An Englishman, remembering Balaklava, would not have derided such men as these, if he had spoken from his own heart.

" 97. From *The New Eclectic Magazine*, September, 1869.

POLITICAL.

SPEECH

AT THE

MARYLAND INSTITUTE,

FEBRUARY 1, 1861,

At the Meeting Held Under the following Call:

TOWN MEETING IN FAVOR OF RESTORING THE CONSTITUTIONAL UNION OF THE STATES.—The citizens of Baltimore, who are in favor of restoring the Constitutional Union of the States, and who desire the position of Maryland in the existing crisis to be ascertained by a Convention of the People, are respectfully requested to attend in Mass Meeting, at the Hall of the Maryland Institute, on Friday Evening, 1st of February, proximo, at 7½ o'clock.

SPEECH.

MY FRIENDS AND FELLOW-CITIZENS:—I think my friend who has just taken his seat, (Mr. McLane,) has apologized to you, with great injustice to himself, for the desultory manner, as he called it, in which he has discussed the questions presented to you by the resolutions. I confess that in rising to succeed him, I am greatly embarrassed by the eloquent fulness with which he has addressed those questions to your consideration. I feel too, fellow-citizens, that the reasoning involved in the issues before you is almost exhausted by the simple statement of the propositions which the resolutions themselves announce. The unanimity with which those resolutions have been greeted, demonstrates that both they and their reasoning have gone home already to your hearts and judgments; and there is, therefore, little left for any man who speaks to you, but to echo with a feeble voice, the sentiments which you have already spoken with a loud one.

But, my fellow-citizens, I have a feeling in addressing you this evening, which overcomes all consciousness of embarrassment, and that is the feeling of intense personal indignation at the position in which I am compelled to stand before you,

and in which you are here listening to what any of us may have to say to you. The Governor of the State of Maryland, who would have been at best your servant, if he had been chosen by your suffrages—but who was not chosen by your suffrages and yet insists on being your master—has given it to be understood, that those who do not agree with him in thinking it the bounden duty of Maryland to be voiceless and motionless in this great crisis of the Republic—you and I and every honorable and patriotic gentleman around me—are but a horde of disorganizers and disunionists—not fit to be heard upon the question of saving your country and mine.

Not merely by his illegal and unconstitutional course has he condemned us to silence and helplessness; not only has he held us up to public and private denunciation as foes to the Union—weakening the confidence of brother in brother, and poisoning with suspicion the relations of friendship and good citizenship among us—but he has permitted the Governor of Pennsylvania, in an official letter, unrebuked, to insult us, citizens of Maryland, by charging that those of us who advocated the call of the Legislature were seeking to "swerve" him—the Governor of Maryland—"from the path of duty." Speaking for myself, and for the friends whose sentiments I know, and in whose action I have shared, I pronounce the imputation false—whether it be official or unofficial—whether it come from the Governor of Pennsylvania, or from the Governor of Maryland, or the clique behind him. I say it is an imputation which the people of this meeting, of this city, and of this State, if they respect themselves, should resist and denounce.

Not love this Union! In the name of the God who gave it to us, what higher stake has the Governor of Maryland in it than you or I? Who kindled a heart in his bosom, to beat in truer or more fervent and grateful sympathy, than yours or mine, with all the glories which this Union has brought us—with its countless blessings and its magnificent hopes? Is it that the Governor and his counsellors understand these things better than we? Do they mean to tell us that, like the friends of holy Job, "they are the people, and wisdom shall die with them?"

My fellow-citizens, I was taught, from my childhood, to love and cherish the Union, and there is not a reflection or conviction of my manhood that has not warmed and strengthened my devotion to it, and heightened my zeal for its perpetuation. When I was called upon, during the last Presidential canvass, to choose between Mr. Breckinridge and Mr. Bell—notwithstanding the preference which I entertained for the former gentleman, because of his peculiar position in regard to the constitutional questions of the day—I was chiefly and especially led to his support by the conviction (as I more than once publicly stated,) that the electoral vote of Maryland, rendered in his behalf, would place her side by side with her Southern sisters, in a position to counsel peace and moderation, and keep unbroken the blessed bonds in which our fathers bound us together.

It was suggested here during that canvass, as we all know, in public speeches, by gentlemen who claim to represent us in Congress, that there was no reasonable apprehension of disunion—that the threats of the South were all bluster, and would amount to nothing when the time came. It was mani-

fest, nevertheless, to those who looked at the past and the future with the calmer and juster eyes of statesmanship, that an issue had for a long time been approaching which might at any moment be precipitated upon the country; and that unless the fanaticism of the North should cease its aggression, and demagogues, not of the North, should cease to play into its hands, the point of resistance must soon be reached, and the question of Union or Disunion be met and settled forever. To suppose that it could be evaded or ignored was simple folly. To hope for the maintenance of the Union, without removing the causes which were daily converting into hatred and alienation the brotherly feeling on which the Union is based—and without which it can never stand, and will not be worth preserving—was equally futile.

As one of the humblest of those to whom the future presented this threatening aspect, I could not resist the conviction that there was but one hope of relief before us—in case good feeling should be powerless, and the point of conflict should be reached—and that was, for all the States whose institutions and rights were in peril, and who desired to maintain the Union and the Constitution, to unite in one phalanx, and with one voice to say to the aggressor—"Here is the Rubicon—you shall not pass it!" And, my fellow-citizens, as surely as you live and I live, if even the border States alone of this Union, two months ago—with Maryland in their midst, speaking for herself, and her great stake in the Republic—had taken that manly ground, moderately and calmly—without threats and without insult, but with fixed and immovable resolution—the point would have been gained, the appeal would have been responded to, the wrongs would

have been righted, the agitators would have been silenced, the crisis of the Republic would have been over, with all its sorrows and dangers, and the places of industry and labor and happiness, now desolate, would be blossoming like the rose. Over the waves of fraternal discord, the people of these central commonwealths had only to stretch forth their hands, and the divided waters would have been a wall to them on their right hand and on their left, and they could have walked dry-shod through the midst, with the Union and the Constitution. It was the high destiny of working this great and glorious good that I, for one, would have had Maryland win for herself. It was for this that I would have had her lift herself from the criminal supineness in which she has lain, and which, until of late, the Border States have too far shared with her. But Mr. Hicks has willed it otherwise; and it has come to this, in the order of Providence, that since this crisis has been upon us, there has been no State of Maryland, but Mr. Hicks and the clique around and behind him.

And even now, at this present, and anxious, and almost despairing moment, when the Union is well nigh in the throes of its dissolution, and Virginia has called together a council of her sisters, to save it, if they may, in its last hour—even now, the people of Maryland have no voice of their own, wherewith to speak in its behalf. The representatives who stand in her place in that council, speak neither your voice, nor my voice, and have authority to represent nobody but Governor Hicks and themselves. Nay, I am wrong. They do represent something more than a mere absence of authority. There yet linger in this Hall the echoes

of the speech which was made here, not long since, by my able and venerated friend—the Honorable Reverdy Johnson, now one of the Commissioners—the conciliatory burden of which was a legal argument to show that the people of the seceding States were traitors, and might be punished for their treason. In commingled echoes come back to us, also, the suggestions of the address which my eloquent friend, Mr. Bradford, another of the Commissioners, delivered at the same time, and in which he told the "friends of the Union," that in considering the solemn issues which divide the nation, they ought to concentrate their efforts upon the open revolutionists of the South, and not waste their strength upon the Northern aggressor as the first wrong-doer! With these ideas of what is demanded for fraternal reconcilement—for the healing of wounds, and the re-establishment of peace among brethren on the basis of right—I regret to believe that the distinguished gentlemen whom I have named do represent positive opinions which are utterly hostile to the rooted and solemn convictions of the good people of this commonwealth. I speak with all the respect and consideration due to their high character and talents, and with all loyalty to personal friendship. If, by their efforts and influence, they can save this Union, or aid in saving it, as it has been to us heretofore and ought to be forever, there will not rise to heaven a prayer of thankfulness more earnest and unqualified than mine. Be the result of their mission, nevertheless, what it may, it is due to ourselves and our rights to declare, that the act which has given them their places is a gross official usurpation.

In commenting thus far upon the action of the Governor of Maryland, I have dealt only with generalities. I desire

to do him no injustice; and I am prepared to verify what I have said and mean to say, and what has been said by my distinguished friend, (Mr. McLane,) in regard to the course of Governor Hicks, by reference to his own published letters and addresses. I hold in my hand his various and progressive contributions to constitutional literature and jurisprudence—"which—pardon me—I do not mean to read." The starting-point in Dorset County, from which he brought the rudiments, is very far removed, I assure you, from the point which he has attained in his communication to the Commissioner from Alabama. Let me invite your attention for a moment to the progress of his ideas.

On the 27th of November, 1860, Governor Hicks addressed a letter to the Honorable Thomas G. Pratt, and other gentlemen, who prayed him to exercise his powers and discharge his duty, by calling an extra session of the Legislature. He declined to comply with their solicitations on the following grounds:

"I cannot but believe that the convening of the Legislature in extra session at this time, would only have the effect of increasing and reviving the excitement now pervading the country, and now apparently on the decline. It would at once be heralded by the sensitive newspapers and alarmists throughout the country as evidence that Maryland had abandoned all hope of the Union, and was preparing to join the traitors to destroy it." . . . .

"You, gentlemen, favor an extra session only because of the importance of the present crisis; but there are others who think of their own interests rather than those of the State, who would be found seeking to monopolize the valuable time

of the body in furthering schemes of personal advantage which can well afford to await the meeting at the regular session."

Nevertheless, he said that "the wishes of the people should certainly be respected in this matter," and after insisting on the propriety of waiting until we should "hear from the National Executive," from "the other Border Slave States," and from "the congregated wisdom of Congress," he declared, "I shall hold myself ready to act promptly, when I shall believe the honor and safety of Maryland require me to act in the premises." Time wore on. The National Executive had been heard from, and, it seems, without much consolation, for the Governor had waxed nigh to being a "secessionist." On the 6th of December, he addressed a letter to Captain John Contee, of Prince George's, which stepped, as it seems to me, far over the boundaries of what he now supposes to be treason.

"If the Union must be dissolved," he says, "let it be done calmly, deliberately, and *after full reflection on the part of a united South.*"

He then discusses the personal Liberty Laws, and proceeds to declare, that

"These laws should be repealed at once, and the rights of the South guaranteed by the Constitution, should be respected and enforced. *After allowing a reasonable time for action on the part of the Northern States, if they shall neglect or refuse to observe the plain requirements of the Constitution, then, in my judgment, we shall be fully warranted in demanding a division of the country.*

"We shall have done our duty to the Constitution, to the memory of our fathers, to ourselves and posterity, and the

South can honorably take such steps as patriotism and honor may demand, either in or out of the Union."

In conclusion, he adds: "*I shall be the last one to object to a withdrawal of our State from a Confederacy that denies to us the enjoyment of our undoubted rights; but believing that neither her honor nor interests will suffer by a proper and just delay I cannot assist in placing her in a position from which we may hereafter wish to recede. When she moves in the matter, I wish it to be side by side with Virginia—our nearest neighbor—Kentucky and Tennessee.*"

If all this be not rank "secession," as the Governor now understands it, I cannot understand him. I do solemnly pronounce it treason, for which he ought certainly to be hanged—according to his doctrines, I beg you to understand me—not according to mine. But whether it be treason or not, I ask you emphatically to note the sentiments declared from the executive chamber. I ask you to bear witness from the Governor's own unequivocal, and I trust conscientious language, that on the 6th of December he called for the action of "a united South;" that he recognized the right of the South to "demand a division of the country," if its constitutional guarantees were not protected, and to act "either in or out of the Union;" and that he declared he would be "the last man to object to the withdrawal of our State" from the Union, in such a contingency. All that he asked for was "reasonable" delay—all that he claimed for Maryland, was that she should be "side by side with Virginia, Kentucky and Tennessee." Time still went on. Upon the 9th of December, it became the duty of Governor Hicks, to respond to the communication addressed him by a commis-

sioner from Mississippi. Again his plea was only "that time be given, and opportunity afforded for a fair and honorable adjustment." About the course to be adopted, in case that adjustment could not be made, he had neither doubt nor difficulty. "Fraternal concert with the other Border States" was still his alternative. Here is his language:

"Whatever powers I may have, I shall use only after full consultation, and in fraternal concert with the other Border States, since we, and they, in the event of any dismemberment of the Union will suffer more than all others combined."

"I am now in correspondence with the Governors of those States, and I await with solicitude for the indications of the course to be pursued by them. When this is made known to me, I shall be ready to take such steps as our duty and interest shall demand; and I do not doubt the people of Maryland are ready to go with the people of those States for weal or woe."

And we added—"I fully agree with all that you have said as to the necessity for protection to the rights of the South; and my sympathies are entirely with the gallant people of Mississippi who stand ready to resent any infringement of those rights. But I earnestly hope they will act with prudence as well as with courage."

On the 3d of January, 1861, being pressed by a majority of the Senators of Maryland to call the Legislature together, he published an address to the people, in which he protested and enlarged upon his own patriotism in refusing to convoke it; denounced the motives and principles of "the men embarked in the scheme" of calling it together: charged the existence of a conspiracy to capture the Capitol and the federal archives, which, he intimated, was at the bottom of

the movement he was resisting; and endeavored to rally the citizens of the State around himself and his policy, by every appeal to their fears, their sympathies, their credulity and their prejudices. Yet even in this, the most elaborate and passionate of his efforts, he did not venture to desert the plan of consultation and united action with the Slave States of the Border.

"Believing," he declares, "that the *interests of Maryland were bound up with those of the Border Slaveholding States, I have been engaged, for months past, in a full interchange of views with the Governors of Virginia, Kentucky, Tennessee and Missouri, with a view to concerted action upon our part. These consultations, which are still in progress, I feel justified in saying, have resulted in good; so that when the proper time for action arrives, these sister States, bound up in a common destiny, will, I trust, be prepared to act together.*"

And he adds, with increasing emphasis:

"I firmly believe that the salvation of the Union depends upon the Border Slave States. Without their aid, the Cotton States could never command the influence and credit and men essential to their existence as a nation. Without them the Northern half of the Republic would be shorn of its power and influence. Within the Union, I firmly believe we can secure guarantees for our protection, which will remove these distressing causes of irritation.

"*If we find hereafter that the North shall, after due deliberation, refuse to give them, we will, in a united body, demand and receive a fair division of the national domain.*"

On January 12th, a committee of most respectable gentlemen, deputed by a conference from all portions of the State,

and held in the Law Buildings of this city, had an interview with the Governor. The Conference had deferred to his declared objections to the convocation of the Legislature, and the committee were instructed merely to solicit that he would issue his proclamation inviting the people to determine, by their ballots, whether they desired a Convention to be called. In case of an affirmative response to the appeal, the Governor was requested to designate a day for the election of members to the contemplated body. The Governor declined. He still desired delay. "He preferred waiting" (according to the announcement in the Baltimore *American*) "until Mr. Crittenden's compromise resolutions should be finally acted upon, before taking any decisive step upon the subject at issue." On the 24th of January, to the astonishment of everybody, except those initiated in the mystery, there appeared in the Annapolis *Republican*, a copy of a letter bearing date as far back as the 8th of that month, and addressed to the Hon. J. L. Corry, Commissioner of Alabama, wherein every previous suggestion of the Governor, and of everybody else, looking to "a united South," a "concert of the Border States," "a united body," a position "side by side with Virginia, Tennessee and Kentucky," an association "for weal or woe," with those States, or any other States, "in a common destiny," is utterly repudiated and denounced, as a flagrant violation of the Constitution—a step to which "the people of Maryland will never consent!" Such "fraternal concert" for any purpose or in any shape, is not (he says) for an instant to be tolerated. Let us hear the language in which this doctrine is proclaimed, from the same lips by which the people of Maryland were so often assured, as I

have shown you, that the identical course, now so bitterly denounced, was nearest the Governor's heart. He speaks thus:

"I cannot see how, while the Constitutional prohibition stands against compacts or agreements between any of the States, any 'mutual league' can be had, even between those whose hopes and hazards are alike. And if this prohibition has been judicially declared to include 'every agreement, written or verbal, formal or informal, positive or implied, by the mutual understanding of the parties,' then I am unable to imagine how any league or covenant or understanding whatever, unauthorized or unapproved by Congress, even though it should be in furtherance of the laws and for strengthening the Confederacy, can be otherwise than in plain violation of the clearest provisions of the supreme law of the land."

Instead, therefore, of hearkening to any such treason—instead of proceeding with the Border States "in a united body, to demand and receive a division of the national domain;" instead of "demanding a division of the country;" instead of having our Governor to lead us, "in fraternal concert with the other Border States," in the ultimate vindication of our common rights and "common destiny"—instead of "concerted action, upon our part," with the people with whom we are "ready to go"—we are to do what? Abide by the action of Congress!

"The Congress of the United States," says the Governor, "offers the only mode, authorized by the Constitution, for consultation and advisement among the several States. To the Congress I still look with confidence for such enactments as shall secure our just and equal rights, and shall satisfy all

except those who are determined to be satisfied with nothing but revolution, and the hopes that are to arise to them from anarchy and confusion."

Fellow-citizens! does not this suffice? Is it not as plain as fact and argument can make it, that the people of Maryland have been deluded and deceived? Is it not manifest that they have been entertained and kept quiet by assurances of a desire and a purpose to unite them, in the vindication of their position, with the Border States, should the disruption of the Union be inevitable, and that all those assurances were hollow, and are now to be repudiated and abjured? Is it not demonstrated that the States, which it was declared would be "prepared to act together," are not to be allowed "to act together," if Mr. Hicks can prevent it? The result of the whole is perfectly palpable. It is intended that Maryland shall be kept inert and silent under one pretext or another, until the inauguration of Mr. Lincoln, and then her people are to be rallied to his support, as the representative of the government and the Union, and their love and devotion to the Union are to be their lure and decoy into the practical support of the Republican party. (Cries of "Never, never.") I welcome the declaration, not only as your sentiment, but as the feeling of the whole people of the State. The scheme nevertheless is as plain as the sunshine—as transparent as the moonlight. Happily it is a bargain which it takes two to make, and which you can thwart.

In attempting to expose it, I have had no desire to throw one single spark of excitement into a controversy which the conduct of the Governor and his partisans has rendered exciting enough. But as a citizen and a gentleman—involved

with whole masses of the good people of this State, in an imputation of treason and perfidy to that sacred constitutional Union, which I cherish more than all things else, in my relations, as a patriot, to my country—made too, in common with those whose opinions are like my own, the subject of insolent reproach to the Executive of my State, by the sympathizing Executive of another, I have felt it due to all of us that the course of Mr. Hicks should be made so plain, as that he who runs may read it. And I do solemnly declare, that I have never entertained an opinion, nor do I understand the resolutions before you as asserting a doctrine, in regard to the course to be pursued by Maryland in the contingency of a dismemberment of the Union, which goes one step beyond the doctrines of Governor Hicks upon the same subject, so repeatedly and ardently proclaimed by him, and now, at the last, repudiated.

A word upon another branch of the same subject. The Constitution authorizes, and in my judgment directs, the Governor to assemble the Legislature upon extraordinary occasions. Even upon his own theory he is bound to exercise that power now; for whatever his previous opinions may have been, the very fact that he has sent commissioners to Washington, for the purposes set forth in the invitation of Virginia, is a concession that one of the most extraordinary occasions which could shake an empire has startled and affrighted this Republic. Nevertheless, he will not assemble the Legislature. The stars have said it. He has assumed, and his friends and advocates have assumed with him, that its convocation is not desired for any other purpose than to fling this State forth madly from its sphere. He

and they contemplate, or profess to contemplate, nothing but secession, and secession in the wildest shape, and for the most corrupt and infamous purposes, as the result of the meeting of the General Assembly. Fellow-citizens, no man has a better right to know, and no one has a more incumbent obligation on him to do justice to the present Legislature of Maryland, than I have. I was before them, last winter, long and often, with friends who are around me, in the successful effort to restore, by proper legislation, the rights and order of this community. It is to their patriotic and conservative action, altogether, that you are indebted for the freedom with which you assemble here to-night to speak your sentiments, and for the security which will attend you to your homes when you separate. It is only because of that conservative action of theirs, on your behalf and mine, that red-handed murder no longer writes election returns among us, for Congressmen who misrepresent us, and Governors who usurp our prerogatives. And I tell you, fellow-citizens, that the self-same reasons which make the Governor of Maryland distrust that Legislature, ought to be your reasons and mine for trusting it. It is natural that you and he should view with different eyes, the principles and conduct of those representatives of the people, by whose interposition we were enabled to break down the brutal despotism which made him Governor of Maryland. I repeat, therefore, that I have reason for confidence in that Legislature, and that the proper mode of giving utterance to the sentiments of our people, is through a convention which that Legislature shall call. If the Governor persists in refusing to give the people that legitimate and constitutional opportunity of being heard, the

responsibility is on his head, and they must do the next best thing they can, by calling a convention themselves.

In the presence of what crisis and what necessity do we stand, fellow-citizens? Let us look at it like men. Six States of this Confederacy have gone out from it. God knows that their departure from this Union has given me only anguish. The ringing of bells and the booming of cannon seem to me no proper part of the demonstrations which belong to an event so sad. I feel as if every true-hearted man should bow to such a dispensation—inevitable as it might be—in the spirit with which he would follow his mother to the grave. But whatever be the feeling with which we regard the fact, it is a fact nevertheless. Six States have gone from among us. Call it revolution, or secession or rebellion—call it anything you please—still they have gone out of the Union, and it depends upon the result of the conference, which is about to take place in Washington, whether the remaining Slave States South and West of Maryland—the whole broad belt and border from the Atlantic to the Mississippi, and beyond—shall not go out likewise. And while this great problem of our destiny is being solved, and howsoever it may be solved, we are told that our interest and our duty—our obligations to the Republic and ourselves—require us to be silent and quiet—to surrender ourselves to Gov. Hicks, and "cling to the Union!" Cling to the Union? Cling to what? What is the Union into which Maryland entered, and to which she belongs? A great Republic, one and undivided, almost covering a continent. Where is she in that Union? A central State—the tendrils of her prosperity fastening, upon every side, to the

confederated communities around her. You break that confederacy in the midst, leaving her a border province, with a foreign nation, and perhaps an enemy, beside her, and you tell her to cling to the Union still—to cling to what then exists no longer, in love or association, or peace!

Oh! but say our constitutional lawyers at Annapolis and elsewhere—the Union will not be dissolved—the States will have only seceded, and secession is unconstitutional—everything, therefore, will be as it was before, and Maryland must cling to it! Are we talking with men, or are they talking to us as children? Are we to look at abstractions and statute-books, or are we dealing with the great and palpable, and if you please, the terrible facts of a revolution? I have heard no argument to prove to Maryland that the States which have left and may leave the Union, in fact, must still be regarded as part of it, which would not prove with equal demonstration that the United States of America are still the colonies of Great Britain. I have heard no logic that establishes the constitutional right of half the Union to call itself the Union, because it preserves the forms of the government, that would not equally prove Massachusetts to be the United States, if every other State were to leave her, provided she chose to retain the national name, and had army and navy and strength enough to enforce her pretensions by arms.

The Cotton States, then, are out of the Union. The responsibility, it is true, is on their heads—but still they have left it. The Border States to the South and West of us, unless it pleases heaven to permit a compromise, will go out also. What is the State of Maryland to do? To tell her to cling to the Union then, is to bid her cling to the North, and

clinging to the North, means clinging to the Republican party. And this when she knows that if the line be drawn on the Slave border, the right is on the one side and the wrong is on the other, and the Republican party is the champion of the wrong. In the olden times, when the people of Maryland acted on such questions, and had found the right, they did not doubt whither their course lay; nor did it take them three months, with a volume of correspondence, to distinguish the right from the wrong.

But there is a theory, as you are aware, my fellow-citizens, upon which the fact of any possible disruption of the Union is seriously challenged in argument—I mean the theory that the Federal Government may of right coerce into allegiance the States which have abandoned it. I desire to speak upon this branch of the subject, without expressing the indignation with which I think it deserves to be treated. Speaking as a lawyer, upon a subject within the range of my professional studies and reflections, and having anxiously sought to get at the truth in regard to it, without prejudice or passion, I assert the deliberate opinion—as strongly and as conscientiously entertained as any I have ever formed—that the idea of coercing a State or its people, when that State, in its corporate capacity, has declared itself out of the Union, has no color or support whatever from the Federal Constitution. Everything I have read convinces me, with equal positiveness, that any attempt to force such a principle into the Constitution, would have been utterly fatal to the possibility of its adoption. I challenge any man to read the records of the Convention which framed the Constitution, or search the proceedings of the State Conventions which ratified it, and

deny the fact, that whenever the suggestion of coercing a State was made, or of repressing by force any revolutionary State action, the men of mark and controlling influence in those bodies denounced it as impracticable and absurd, involving of necessity the bloody and hopeless disruption of the Union they were forming. I state the proposition as one standing by itself—unconnected with the question of the constitutionality or unconstitutionality of secession, and true in either aspect of that question. And is it not right? Does it not carry along with it every interest of civilization and humanity—every principle and theory on which our governments, both State and national, were founded?

I confess I cannot realize what gentlemen mean when they talk with sober seriousness about hanging and shooting men back into brotherhood and union with us. I do not understand their idea of perpetuating the Republic by drenching its broken fragments with fraternal gore. Above all I cannot comprehend the philosophy of those who, believing that secession is unconstitutional, still believe that the people of the South have been goaded to it by unconstitutional wrong, and would execute them for treason nevertheless, because they are not quite patient enough in enduring it. The Union is a great blessing and a glorious privilege, but there is no law of God or man which will uphold the doctrine of cementing it with blood, under color of maintaining a government which rests upon two leading principles: the one, that all government is founded on the will of the governed; the other, that the doctrine of non-resistance to arbitrary power is slavish and absurd.

I, for one, have those who are bound to me by the closest ties of kindred and affection, in two States, whose Conven-

tions have solemnly repealed the ordinances which bound them to the Union. There are a thousand men before me, each of whom has some close bond of friendship or of family, where the old political ties have been sundered. To say to you and to me, that it is our duty, under the Constitution we have sworn to uphold, to go among them with fire and sword, and to ravage and despoil their heritage, in order that they may love us and cleave to us hereafter, is to announce a doctrine, in support of which no government can ever raise the arm of one free man in Maryland.

This is not sentiment merely. It is reason, and truth, and manhood—and any theory that the Union is to be preserved by compulsion will fall to the ground, and sink in it, of its own weight. What, then, is Maryland to do if compromise should fail, and the line of actual separation be drawn along her border? It becomes her to be ready for that issue. She has a right to speak, and it is her duty and her interest to speak. Let her do it. Down to this time, no man is able to say with authority what her will is. The people of the North have believed her silence to be Northern sympathy, and they have resisted compromise. The people of the South have been discouraged by it, and they have precipitated action. She has not only held her own hand from the good work of mediation, but she has strengthened the hands besides, that were already too strong for the Constitution. Thank heaven, the sin of her withdrawal from the field where her labors were due, is not on your heads or mine. If ever history should write the record of the disruption of this government, the blackest of its pages will be that on which are written the names of those—whether States or men—who ought to

have stood up between the living and the dead, yet did it not. Let the evil of such reproach hang over us no longer. Let us assemble our Convention and declare our resolves, and no longer let our destinies be shaped for us by the will and usurpation of a single man. It may be that Governor Hicks is wiser than all the rest of the Union put together. It may be that he has sources of information, "not accessible" to anybody else. It may be that the Convention, when assembled, may represent his sentiments, not yours or mine. If it should do so—very well—I will obey. If it should not, I desire him to obey. But it is time we had insisted upon having the point finally determined. It is not only due to our independence, our interests and our patriotism, but our self-respect and self-vindication demand it. Wars and rumors of wars, conspiracies and tumults, riots and routs, have been flitting in terrible array through the Governor's imagination, convincing him that we were not fit to be trusted with our own government and our own affairs, and that it was his paramount and sacred duty to keep us quiet and attend to our business himself. I suppose he has believed in all these visions and dreams,—at all events he has acted upon them,—and it is high time we had made up our minds to say whether they are true or false, and whether the Governor is the only man among us, in public or private station, who is honest and wise enough to be trusted with our stake in the Union or our destiny in the event of its disruption. If he is right, let the Convention say so. If we are to go to the North, let the majority so rule—if we are to be spared that journey, let us know it!

As to the questions which may come before the Convention, when it meets to deal with the great contingencies of the

future, and the terms of our possible relation to a Southern Confederacy, I am only now prepared to say, that they involve much complication and embarrassment, demanding all the resources of wise and patient statesmanship. There may be difficulties in my way, which will not be in yours, and difficulties in yours, which may appear none to me. The ballot-box will settle these differences, fairly and peacefully, and only the ballot-box can so deal with them. It is as far as possible from my purpose to say anything tending to excite; but I am as certain as I am of my existence, that if the Governor of Maryland were able to carry out his plan of preventing the people from thus determining these matters for themselves, it would create domestic strife among us, as surely and as sadly as coercion elsewhere would breed civil war. By temperament, and from conviction, I am a man of peace, and I turn therefore to the pacific arbitration of the ballot-box, as our refuge from the horrors of such an alternative.

Fellow-citizens, I have finished what it has seemed to me proper to say to you. I repeat to you, so that no man may misunderstand me, that I desire, above all things, the glorious Union and Constitution to be preserved, for they are the best heritage bequeathed to us by our fathers, from whose dust every blessing of our political existence has sprung up to us. If that Union cannot be preserved by fair concession and honest and becoming compromise, I desire the State in which I was born to take her stand with the right. That it is right is reason enough; but I believe, besides, that with nations as with men, wherever right is, there every true interest is sure to be likewise. Whatever the decision of Maryland shall be, in that decision I shall acquiesce, for my home and my destiny

are here. But one thing I am sure of, and that is, that any reconciliation that may be patched up, will be a wretched and melancholy failure, ominous of future and bloody discord, unless the question of slavery be taken from the Congress of the United States, and the discussion of the institution and the principles which surround it, be removed forever from all political temptations. The people of the South will not—the people of Maryland never will—submit to have religion and morality manufactured for them by Massachusetts. We will never consent to accept Plymouth Rock as the touchstone of right and truth.

One word more and I have done. What I have said to you, I have said altogether as a private citizen, speaking his individual sentiments only, and desiring to represent no one but himself. I believe that on occasions of public difficulty like the present, it is the duty of every man to form his own conclusions patiently and deliberately; to express them frankly, and take the consequences. That done, his duty ends, and it is for the majority to settle the rest. I belong to no party. I say this, because I desire to be understood as speaking in the interests of no party, and to please none. I am no politician, and do not covet being regarded as one, for no man can be more wholly devoid than I am of political aspirations or ambition. If you believe me to be a man of truth, I ask you to believe that I mean precisely what I say. For the opinions I have expressed to-night, I claim no indulgence, unless it be such to have them dealt with as honest, whether you or the community concur with them or do not.

REPORT

OF THE

COMMITTEE ON FEDERAL RELATIONS,

ON THE COMMUNICATION OF THE MAYOR OF BALTIMORE, AND RECOMMENDING THE APPOINTMENT OF MESSRS. McLANE, SCOTT, AND ROSS, AS COMMISSIONERS TO VISIT WASHINGTON,

MAY 2, 1861.

REPORT.

To the Honorable, the Speaker of the House of Delegates of Maryland:

THE Committee on Federal Relations ask leave respectfully to report, that they have duly and carefully considered the communication from his Honor, the Mayor of Baltimore, which was referred to them, inclosing a copy of a joint resolution of the two Branches of the City Council of said city, in the following words:—

"*Resolved by both Branches of the City Council of Baltimore*, that the Mayor be, and he is hereby requested to communicate with the General Assembly of Maryland, now in session, for the purpose of procuring such action of that body as may, in their judgment, be most advisable to bring about as early a restoration of the communications by the different railroads and other means between the city of Baltimore and other parts of the country, as may be entirely consistent with the safety and welfare of the city and State."

It is impossible to overrate the importance of the subject to which the attention of the General Assembly is thus directed. The almost total interruption of direct communication between Baltimore and the North, by the destruction of the bridges upon the Northern Central, and Philadelphia, Wilmington and Baltimore railroads, is an evil of a very

aggravated character, not only in itself, but in its manifold bearings upon the prosperity of the State and its commercial metropolis. On the other hand, in the face of the dangers which would seem inevitable if facilities for invasion were offered to the fanatical and excited multitudes of the Northern cities—whose animosity to Baltimore and Maryland is measured by no standard known to Christian civilization, and which publicly threaten our destruction, without subordination even to this Federal authority,—it would hardly be consistent with the commonest prudence to re-open the avenue which would bring them to our very doors. Indeed, if it were the pleasure of the General Assembly to provide for such a measure, no security would certainly exist for its permanent enforcement, during the continuance of the natural excitement which now disturbs our people. The instinct of self-preservation is far more powerful than any sense of obedience to law; and coupled as it is, in the present case, with every prompting of resistance to violence and wrong, it would be sure to over-ride all the ordinary restraints which a free government is capable of imposing. It would be of small avail for your committee to discuss this state of facts, further than to say that it exists, and must be dealt with, carefully and wisely. The channel of intercourse with the Northern States cannot be effectively re-established without a guaranty from some quarter, of the safety and peace of Maryland. Your committee are not able to perceive how this result can be attained without some communication with the Federal authorities at Washington; and, in their judgment, it is due to the people of this State, whose lives and property are involved so deeply in the contingencies of the unhappy strife

which has sundered the Republic, that some such communication should be forthwith opened by the General Assembly.

There are other and independent reasons which render such a course indispensable at this time to the dignity and interests of the State. Two works of internal improvement in which she is largely interested, have been seized, in whole or in part, by the general government, for military purposes, to the exclusion of the rights of the State and her citizens. Upon one of those works (the Washington Branch of the Baltimore and Ohio railroad), the share of the passage-money belonging specifically to this State, and constituting an important portion of her revenue, has been diverted from its legitimate channels by the strong hand. A part of the soil of the State has been appropriated to the erection of fortifications, without even the form of asking her consent. Her seat of government has been converted into a military depot, to the exclusion of the representatives of her people. Martial law has been proclaimed, and the jurisdiction of her courts ousted; along the whole line of the roads which have been dedicated to federal purposes through her territory. So far as this committee are advised, she has been dealt with, in these regards, as a conquered province, without any respect whatever to the relation which she bears to the Union, or to the constitutional and legal rights which that relation confers upon her citizens.

It is therefore the manifest duty of this Legislature to ascertain by direct inquiry, through intelligent and accredited agents, the precise position which the General Government has determined to occupy toward the State, and to seek, by all means consistent with official and personal self-respect, to

modify the embarrassments and diminish the perils with which the existing state of things is fraught.

The committee would fain persuade themselves that such an application will be received with the respectful consideration it deserves; but, at all events, it will have placed the responsibilities of the future where they belong. They therefore respectfully recommend the adoption of the following joint resolution:

S. T. WALLIS,
EDWARD LONG,
JAMES T. BRISCOE,
J. H. GORDON,
G. W. GOLDSBOROUGH.

RESOLUTION.

Resolved by the House of Delegates of Maryland (the Senate concurring), That Otho Scott, R. M. McLane, and Wm. J. Ross be, and they are hereby appointed Commissioners on the part of the State of Maryland, to communicate immediately in person with the President of the United States in regard to the present, and any proposed prospective military use or occupation of the soil and property of the State by the General Government; and they are directed to ascertain and report to the General Assembly forthwith, for its consideration, whether any becoming arrangements with the General Government are practicable in that connection for the maintenance of the peace and honor of the State, and the security of its inhabitants.

REPORT

OF THE

COMMITTEE ON FEDERAL RELATIONS

IN REGARD TO THE

CALLING OF A SOVEREIGN CONVENTION.

[READ MAY 9TH, 1861.]

REPORT.

To the Honorable, the Speaker of the House of Delegates:

THE Committee on Federal Relations, to whom were referred the Message and Correspondence of the Governor, the Bill calling a Sovereign Convention, &c., &c., ask leave respectfully to report, as follows:

The Message of his Excellency, the Governor, demands the consideration of the Legislature, from two points of view—first, in regard to the state of public affairs which it discloses, and secondly, as to the remedy which it suggests to the people of the State for the perilous contingencies which surround them.

So far as we can ascertain the views of the Governor, from the brief presentation of them which the haste of our meeting has, as he states, permitted him to make, it appears that he regards the circumstances which have occurred since the attack upon the Massachusetts regiment in Baltimore, on the 19th of April, as constituting all the facts to which it is necessary your attention should be drawn. Your Committee, of course, recognize the propriety of avoiding at this moment all unnecessary recurrence to discussions which have already been far

overstepped by the rapid progress of events; but they find it, at the same time, quite impossible to do justice to the questions before them, without a frank and explicit reference to at least a portion of the public events which had preceded and were so closely connected with the occurrence alluded to.

The President of the United States, by his proclamation of the 15th of April, had called upon a portion of the States to place at his disposal a body of militia, to the number of seventy-five thousand men. The proclamation was directed against the people of the newly-formed Southern Confederacy, and its purposes and policy were obvious, although its terms were technically shaped in conformity with the Act of Congress of 1795. It recited, with formal precision, in the language of the Act, "that the laws of the United States were opposed, and the execution thereof was obstructed," in the seven seceded States, "by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals," and it called forth the militia of the other States, in the further language of the statute, "to suppress such combinations, and to cause the laws to be duly executed." In pursuance of another section of the law, it then commanded "the insurgents to disperse and retire peaceably to their respective abodes" within twenty days.

If there is any proposition clear beyond dispute, it must be, that if the occasion which authorized the President to call out the militia, under the Act of 1795, existed at all, it was declared, by the explicit terms of the proclamation, to exist only in the States of the Southern Confederacy, which were therein enumerated. It is equally indisputable, as matter of law, that the militia, if called out lawfully at all, were law-

fully empowered to execute the laws and suppress unlawful combinations in the seven States named, and in none other. Such a conclusion of law is not only obvious and unavoidable, as matter of construction, but equally to be insisted upon as matter of principle and self-protection on the part of the people; for the exercise of the military power, in a free government, is never to be permitted, except within the limits and under the severest restrictions and checks of the law. If a President of the United States, under the fraudulent pretence of suppressing unlawful combinations in Louisiana and Florida, could be permitted to call out troops, to be used for any purpose in Maryland or Virginia, no soil of any State would be free from invasion, and no right of the citizen anywhere would be secure against overthrow.

It was not, however, because of any apprehension that the militia which were called out by the President would be used in other than the designated quarters, that the Proclamation created an intense and immediate excitement in the Southern and Border Slave States. On the contrary, it was the very purpose announced by Mr. Lincoln which kindled so intense a flame of resentment and resistance. His proclamation was regarded as a declaration of war against the Southern Confederacy—as a deliberate summons to the people of the two sections into which his party and its principles had so hopelessly divided the land, to shed each other's blood, in wantonness and hate. A scheme so full of wickedness—so utterly subversive of every principle upon which our government was founded, and so sure to involve the destruction of that government, let the fortune of war be what it might—could not but excite almost to frenzy every feeling of those who

sympathized with the people against whom it was fulminated. Independently, too, of its wantonness and inhumanity, it was felt and known to be a gross violation of the Constitution, and without color of lawful authority. The people of the seceded States, whether constitutionally or unconstitutionally, had separated themselves from this government and established a federal government of their own, with all the forms of a constitution and all the substantial attributes of actual independence. Through their constituted authorities and in their collective capacity, as communities, they had withdrawn themselves from the Union—repudiated its laws and excluded its officers, of all sorts, from the exercise of all functions and jurisdiction. The United States Government no longer had among them either courts to issue, or marshals to execute process. They had substituted their own courts and their own processes, to which they yielded cheerful obedience. The authority of the Federal Government was in fact dead within their limits. They were in an attitude towards it, not only of independence, but of forcible resistance, for they had repelled the assertion of its authority over any portion of their soil, and had subdued, for their own protection, one of its fortifications within their borders. The Confederate Government and that of the United States were, in fine, belligerents, engaged in actual, though undeclared war, and with all the rights and responsibilities which it gives and entails. This last is none the less true because of their being engaged in civil war, for that is like any other war when waged among civilized people. Vattel defines the relations which exist in such cases in terms too clear to be misunderstood, and too well recognized to be disputed.

"A civil war," he says, "breaks the bands of society and government, or at least suspends their force and effect. It produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. These two parties, therefore, must necessarily be considered as thenceforward constituting, at least for a time, two separate bodies, two distinct societies. Though one of the parties may have been to blame in breaking the unity of the State and resisting the lawful authority, they are not the less divided in fact. Besides, who shall judge them? Who shall pronounce on which side the right or the wrong lies? On earth they have no common superior. They stand, therefore, in precisely the same predicament as two nations who engage in a contest, and being unable to come to an agreement, have recourse to arms." (Vattel, Book 3, ch. 18, sec. 293.) To attempt to apply, under such circumstances, to a belligerent people, an Act of Congress, which was meant as a domestic remedy in aid of civil process and to secure obedience to the laws under judicial proceeding, in States still recognizing the authority of the Union and the jurisdiction of its tribunals—was to trifle with the understanding of educated men. To issue a proclamation to three millions of free Americans, composing seven powerful States, and asserting the sacred and indefeasible right of self-government, with arms in their hands, and "command" them as "insurgents" to "retire peaceably to their respective abodes," like a mob at a street corner, was an absurdity too gross to be here respectfully discussed. No government would venture to palm such an imposition upon a people, except in the well-assured confidence of absolute power. Nay, in the passionate excitement

of the moment, the President forgot even the suggestions of politic decorum, and did not hesitate to transgress all possible constitutional limits, and confess a purpose of animosity and revenge, by distinctly calling on the people, whom he summoned to the field, "to redress wrongs, already long enough endured." The proclamation, therefore, meant war, and nothing but war. It could signify nothing else, and to attempt to cloak its meaning and purpose under the flimsy pretext of "executing the laws" and "suppressing unlawful combinations," was but to cover up a flagrant usurpation with words.

Neither the Constitution nor the laws of the United States can be tortured into conferring the war-making power upon the President in any contingency. Where foreign nations are concerned, the plain language of the fundamental law entrusts it to Congress only. As against the States of the Union, the possibility of such a thing is not even contemplated, much less provided for. Like parricide at Athens, it was held too heinous and impossible to be named, even for the purpose of punishment. As early as the fifth day after the meeting of the Convention for the formation of the Federal Constitution, "the use of force against a State," by the rest of the Union, as contemplated in the plan of Mr. Randolph, was denounced by Mr. Madison, and on his motion the resolution providing for it was indefinitely postponed by unanimous assent. Mr. Madison announced it as his deliberate opinion that "a union of the States, containing such an ingredient, seemed to provide for its own destruction." From that day forward such an idea ceased to be a part of the theory of those by whom the Constitution was framed. When Gen. Hamilton was

called to express his opinion upon it, he asked, "How can this force be exerted on the States collectively? It is impossible; it amounts to a war upon the parties. Foreign powers, also, will not be idle spectators. They will interpose; the confusion will increase, and a dissolution of the Union will ensue." The reasoning was unanswerable, and the Constitution happily was not stained with the perilous folly against which these two great statesmen so earnestly protested. There was not a discussion in the debates on the Federal Constitution, whether in the Convention which framed it or the State Conventions which adopted it, that does not confirm this view of its spirit and purpose. The essays of the Federalists are pregnant with demonstrations to the same effect, and there is no constitutional lawyer who does not know that the whole theory of the Government is to act, through the courts, upon individuals, and not through the army and navy upon the States. The brave and wise men who framed and upheld the Constitution, would have died in the breach before they would have submitted themselves to it upon any other basis. It could never have been adopted, it would never have been ratified, upon any other understanding. The States would have endured anarchy, distracted counsels, and all the evils of the old Confederation, aggravated tenfold, before they would have surrendered themselves to any system in which the Federal Government, and least of all, the Federal Executive, was clothed with the constitutional power of coercing them by force of arms. They entered into a constitutional Union, depending for its permanence upon the good faith and good feeling of its members, and deriving its strength from their consent only. They did not abandon themselves

to the bayonets of a military despotism enthroned upon popular majorities.

But, illegal and unconstitutional as was the war which the Proclamation summoned one section of the country to wage against the other, the causes and purposes of that war made it chiefly obnoxious to the people of Maryland and of the Slave States of the Border. It was a war of propagandism and of sectional aggression and domination. It was a war of the North upon the South. It was a war in which the dominant section had seized upon the name and flag, and resources and powers, of the General Government, and was abusing them for its own ends, and for the permanent establishment of its dominion over the other section. It was a war, to the unholy purposes of which the sacred associations and memories of the Union were prostituted, and in which its honored name was taken in vain. It was a war waged against a people of our own name and blood; who sought peace and kindly relations with us, and who asked only to be let alone and to be permitted to govern themselves. It could bring no good, for it could end only in the defeat of the invaders or the subjugation of the invaded, and in either case the union which our fathers left to us, must be at an end. Subjugated provinces could not be sister States; and a Federal Government, professedly republican, maintaining its authority by armies, could not be other than the worst and most unprincipled and uncontrollable of despotisms. The South had entrenched itself upon the principle of self-government. It had offered to negotiate, peaceably and honorably, upon all matters of common property and divided interest, claiming only that three millions of people had a

right to throw off a government by which they no longer desired to be ruled, and to live under another government of their own choosing. Unless the American Revolution was a crime, the declaration of American Independence a falsehood, and every patriot and hero of 1776 a traitor, the South was right and the North was wrong, upon that issue. The people of Maryland, therefore, could have but one choice in such a contest; and while as devoted to the Union and as loyal to the Constitution, as the people of any of the thirteen States, who had formed the one and pledged themselves to the other, they could not but throw the whole weight of their sympathies upon that side to which common interests and institutions inclined them, and with which they felt that the right and the truth were. Nor was it a matter of sympathy merely. The breach of the Constitution involved in the coercive policy of the Administration, was a breach of their rights, and not less than an unlawful aggression upon the rights of the Southern people. It was an overthrow of the principles of free government, and could end in nothing but an ignominous annihilation of the noble institutions of the Republic. The people of Maryland were summoned to take part, as soldiers, in the strife, and as citizens they were asked to contribute their means to its prosecution, and were to bear their share of its unconstitutional burdens. Their stake in the struggle, therefore, was one of political and individual self-preservation. They were bound by every principle and pressed forward by every impulse of right and self-respect, to make every protest against the wrong to their brethren, and the oppression to themselves, which their situation and circumstances would permit. To the requisi-

tion upon them for troops to take part upon the side of the Government in such a strife, their answer, if they could have given it with their own voice, would have been an instant and indignant refusal.

It is deeply to be regretted that the response of his Excellency, the Governor, should have fallen so far short, in this regard, of the manly and patriotic spirit with which the Governors of Virginia and North Carolina, Tennessee, Kentucky and Missouri, threw back the insulting proposition of the Administration. Indeed, the Committee are unable to determine, from the correspondence with which the Governor has furnished the Legislature, whether his Excellency does not still contemplate complying with the requisition as made. His letter of April 20th, to the Secretary of War, is the only one which gives a key to his intentions, and in that he merely announces that he thinks it "prudent to decline (for the present")—not because of the illegality and wickedness of the demand, and the disgrace which the State would incur from acceding to it—but on account of the then alleged disorderly condition of the militia themselves. Your Committee are not prepared to admit the accuracy of the statement made by the Governor in the letter referred to, to the effect that "the principal part of the organized military forces" of Baltimore took part with the "disorderly element" in the affair of the 19th of April. On the contrary, they have every assurance and every reason to believe that the organized military of Baltimore, under the direction of the constituted authorities, and in implicit obedience to their orders, did all that could have been expected from brave men and good citizens to preserve the public tranquillity. But whether the hasty statement

of the Executive be well or ill-founded in that particular, the determination of the State of Maryland, upon the question of furnishing her quota of militia to make war upon the Southern States, ought not, in the opinion of your Committee, to rest a moment longer upon any such collateral and accidental issue. It becomes the self-respect of the State that she should speak out openly and decidedly upon the point, and the question should no longer be left dependent upon what may be hereafter regarded as "prudent" by the Executive. For this purpose, your Committee have prepared and reported a resolution, which is appended to this report, and the adoption of which they respectfully recommend.

It is but justice to the Executive of the State to observe, in this connection, that his Excellency appears to have been misled, in his action upon the requisition of the United States Government, by the two letters of the Secretary of War, dated April 17, in which that gentleman informs him that "the troops to be raised in Maryland will be needed for the defence of the Capital and of the public property in that State and neighborhood." "There is no intention," the Secretary adds, "of removing them beyond these points." In conformity with this information, the proclamation of the Governor—of which he has not furnished a copy to the General Assembly, but which is matter of public notoriety—informs his fellow citizens to the same effect, and holds out the idea that troops from this State may be furnished for the purposes indicated. Your Committee would be happy to persuade themselves that in suggesting the possibility of its being "prudent," at any time, for the Maryland quota to be furnished to the Government, his Excellency could only have contemplated their

employment, in any contingency, for the limited purposes in question. But it does not become the House of Delegates to allow themselves to be deceived by any such intimations from the Government, as these which imposed upon the Governor. The Proclamation of Mr. Lincoln, under which the troops of Maryland have been called into the field, is directed (as has already been observed) against the seceded States and none other. The militia were summoned to execute the laws and suppress unlawful combinations in South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas, and not in Maryland or the District of Columbia. The very requisition of the Secretary of War upon the Governor, is in direct and absolute contradiction to the assurance contained in his letter. The one asks for troops to be used in the South, and not at the Federal Capital, the other declares that their employment, at the Federal Capital and not in the South, is the only purpose contemplated.

One of two things, therefore, is perfectly clear: either the Government had called out troops under the pretense of needing them for one purpose, while intending to use them for another; or it contemplated employing a portion of them at Washington, as a guard and a reserve, but in aid, at the same time, of its offensive movements to the south of the Potomac. In the one case, it can have no claim upon our confidence; in the other, we should be false to ourselves and to free institutions, if we were to hesitate about refusing it our co-operation. Whatever destiny the people of Maryland may be able or willing to shape for themselves, now or hereafter, the Committee would be pained to believe it possible, that a single citizen of the State could be forced or persuaded to take part,

directly or indirectly, in the slaughter and subjugation of our Southern brethren and the overthrow of Constitutional Government by usurpation and brute force. If the Government desires to put an end to all doubts as to the safety of the Capital, it can do so at a word, by putting an end to its own purposes of coercing the South.

What the Committee have already suggested in regard to the character and purposes of the conflict which Mr. Lincoln has inaugurated, under the pretense of enforcing the laws, is so manifestly and indisputably corroborated by his course since the Legislature was convoked, that the Committee cannot discharge their duty without alluding to that course in this connection. Reference is especially had to the Proclamation of the 3d of May, calling out over forty-two thousand additional volunteers, to serve in the militia for a period of three years, and increasing the regular force of the United States by an addition of nearly twenty-three thousand men to the army, and eighteen thousand seamen to the navy. The most unscrupulous advocate of the Administration and its policy, would be compelled to shrink from the task of pointing out any legal or constitutional authority of any sort, for this unprecedented measure. The right of increasing the army and navy is one which belongs exclusively to Congress, and over which the President has no more constitutional control than the humblest citizen. His right to call out the militia is expressly limited by the restriction that their use shall only continue "if necessary, until after the expiration of thirty days after the commencement of the then next session of Congress," (Act of 1795, Sec. 2.) The Proclamation is therefore without any color whatever of right, and is as

plain and bald a subversion of the letter and spirit of the Constitution and the laws, as ever was attempted by the military power, in any government ostensibly free. The pretense of "existing exigencies" is but the shape in which military revolutions have always begun, since the prestige of free institutions has rendered it necessary, even for usurpers, to make a show of apology for overthrowing them.

If ever a triumphant illustration could be given of the wisdom of our fathers, in providing by the Constitution, that the government should operate upon its individual citizens through the laws, and not upon the States by military coercion, it is to be found in the fact, that the first administration daring to depart from this fundamental and consecrated principle, has rushed, in the short space of sixty days, into the assertion of absolute control over the whole military resources of the country, in open and reckless defiance of every legal and constitutional restraint. The Committee hazard nothing in saying, that there is not a citizen of Maryland, whatever be his political opinions, who must not shudder at the palpable and ominous presence of this usurpation, and who does not recognize, for the first time, in his own experience or the history of Maryland, that he is living and moving and holding his civil and political rights at the pleasure of an unrestricted military power, and subject to the arbitrary and anti-republican caprices of what is entitled "military necessity." For any man to be able to persuade himself, under such circumstances, that the policy of the Administration ever meant peace and not war—the "enforcement of the laws,"—the "defence of the capital"—and not subjugation—requires a peculiarity of mental construction with which reason is at a

loss how to deal. To suppose that a blockade of the whole sea coast, from the capes of the Chesapeake to the extreme borders of Texas, with a land army extraordinary of one hundred and fifty thousand men, and a naval increase of eighteen thousand, can be intended only in aid of "the ordinary course of judicial proceedings, or the powers vested in the marshals," and is therefore within the scope of the President's civil functions, and not of the war-making power, which only Congress can exercise, implies a facility of conviction, to which nothing can be regarded as impossible.

The Committee are of course not unacquainted with the familiar doctrine laid down by the Supreme Court of the United States in the case of Martin *vs.* Mott, (12 Wheaton, 19,) and so often cited by those who maintained the absolute authority of the President over the whole question of calling out the militia. The Committee might readily dispose of it if they were willing to stand upon the same grounds with the Administration, by applying to it the doctrine of the inaugural of Mr. Lincoln; and might insist upon confining the ruling of the Court to the particular case and the individual parties concerned, repudiating its controlling authority, upon the one side or the other, on a question of administrative government. Believing, however, that the true and only "loyalty" of a free people consists in their reverence for the laws and Constitution, and their obedience to the tribunals by which these are expounded, the Committee assume that the people of Maryland will cheerfully bow to whatever the Supreme Court has determined, upon the question under discussion, or any other. The case of Martin *vs.* Mott was a controversy between a private of militia and one of the United

States Marshals, who had seized his goods, in enforcement of a fine imposed by court-martial for failure to enter the service upon requisition, according to law, during the war of 1812. The jurisdiction of the court-martial, and the authority of the President to issue the proclamation under which the militia were called out to repel invasion, were both considered in the case; the question in chief, however, of course being the right of the individual citizen to judge, for himself, whether the legal occasion existed, upon which the President might rightfully summon the citizens to arms. This latter was the real and only point in controversy, and the Court decided, that under the Act of 1795, it was for the President, exclusively, to determine whether the exigency contemplated by the law had arisen, and that no soldier or officer had any choice but to obey.

The principle of military subordination upon which this adjudication is distinctly placed by the Court, is too obvious to be confounded with the recognition of arbitrary and irresponsible power, to which the decision is sought to be perverted, by the supporters of the existing order of things. To determine that the President is the exclusive judge of whether an exigency has arisen, in a case to which his discretion is lawfully applicable, is one thing. To give to him the exclusive and irreversible authority to determine, not only the existence of the exigency, but the existence of the case in which it may lawfully arise, is quite another thing. The first is what the Supreme Court has done, the second is what no respectable court, it is confidently assumed, can be persuaded or forced to do, except under the pressure of "military necessity." The one gives to the President the exercise of a

discretion, in certain named and ascertained cases. The other gives him absolute power in all cases. The one endows him with a necessary executive function. The other makes him supreme over all law, by granting him the exclusive control of its application. If the President can not only invoke the military power at his discretion, in cases of invasion, insurrection and resistance to the laws, but can create invasion, insurrection and resistance, by merely proclaiming that they exist, whether, in fact, they do so, or not—there is not a moment of his term, at which he cannot constitutionally compass the absolute subjugation of the people, through the mere official assertion of a falsehood. Assuming for an instant, for the sake of the argument, that the attitude of the seceded States does not, in fact or law, create a case authorizing the President to call out the militia under the act of 1795, is it to be pretended that he makes it such a case simply by calling it such in a proclamation? Is it to be gravely argued, under a constitutional government, that the nation is bound to acquiesce in it as a fact, against the public knowledge to the contrary, and must accept the war, endure the bloodshed, pour out the treasure, and submit to the usurpation, with no other remedy than articles of impeachment, or the chances of the next Presidential election?

The commonest intelligence—the most superficial acquaintance with the scheme and spirit of republican institutions—revolts at conclusions so monstrous. And yet precisely such must be the conclusions to which any man must yield who supposes the Supreme Court to have decided, as has been pretended. That high tribunal never meant to decide, and never did decide, a principle so wholly irrational and despotic.

It is a disrespect to its character to put such a question even in dispute. The way in which the States and the people may and ought to deal with such a usurpation is a matter apart, but that it does not cease to be a usurpation, because of the insertion of a form of words in a Proclamation, is a matter which the Committee will not disparage the manliness and sense of the House by discussing further. Indeed, in his letter of May, 4th, 1861, to the U. S. Minister at Paris, which has appeared during the preparation of this report, the Secretary of State does not hesitate to throw aside all the masks and pretenses of the proclamation, and to admit that it is no longer a simulated question of "enforcing the laws" and "defending the Capital," but a downright case of "civil war"—of "open, flagrant, deadly war," which the United States have "accepted." Such a confession—nay, such a bold and defiant annunciation—that the President has assumed to himself the power of peace and war, in glaring and indisputable subversion of the Constitution, leaves to the people of Maryland nothing further to consider, in this connection, but the fact, that they are face to face with a military despotism, whose only law is its will.

If the Committee are justified, by what has been said, in their view of the constitutional position of the Federal Government, and especially if the admissions now made by it, without disguise, show but the consummation of an original and persistent illegal scheme on the part of the Administration, it follows, as a matter of necessity, that the troops called out by the President were and are an unauthorized body of men, passing across our territory for illegal and unconstitutional purposes, and carrying with them none of the constitutional

safeguards which would undoubtedly accompany any force of the United States exercising the right of transit for lawful and justifiable ends. They were, in fact, not United States soldiers, but "Northern troops," as they were properly designated by the Governor in his correspondence, and "Northern troops," too, whose presence in Maryland, without the consent of her constituted authorities, was indubitably an aggression upon her dignity, her safety and tranquillity. Your Committee, of course, admit, without question, that only the authorities of the State were competent to deal with such a case; and that it could only have been dealt with properly, even by them, in distinct recognition of the fact that Maryland is still a State of the Union, with all the obligations which that relation imposes upon her.

But they cannot shut their eyes to the other fact, equally indisputable, that it was primarily the fault of those who marched the Massachusetts soldiery through Baltimore, upon an unconstitutional and illegal errand, if the popular passions were unfortunately stimulated by their presence into a lawless outbreak, too sudden and too violent to be restrained, for the moment, by the ordinary appliances of a free government. The Committee, therefore, cannot but commend the repeated efforts of the Governor to induce the President to forego his purpose of passing troops across our soil, both before and after the fatal occurrence of the 19th of April. They can only regret that the indignant feeling manifested by his Excellency in regard to the misdeeds of the "rebellious element" at home was not testified, with equal vigor of remonstrance, against the illegality and wrong involved in the proceedings of the Government.

The events which have occurred since the period referred to, the Committee do not feel themselves called upon to discuss in any detail. They have taken occasion to allude, in a previous report, to the humiliating facts which are disclosed by the present position of Maryland. A State of the Union, held to the obligations of that relation, and having never through her constituted authorities pretended to repudiate or abjure them, she is treated as a conquered enemy. Her soil is occupied; her property and that of her citizens are sequestered; her public highways are seized and obstructed; her laws are suspended; her capital is converted into a military post; her Legislature is compelled, in the language of her Executive, to consult its "safety" by holding its sessions at a distance from her offices and archives; troops are quartered around the peaceful homesteads of her people; her citizens are subjected to the illegal and arbitrary violence of military arrest and confinement; her very freedom, in fine, all that distinguished her from a Neapolitan province, before Naples was liberated, is under the armed heel of the Government. That such a fate is imposed upon her, without constitutional authority; that indeed no respect to the Constitution is even pretended in her regard, the frank admission of the Federal authorities to the Commissioners recently accredited to them by this Legislature, renders a mortifying and almost intolerable certainty.

The State of Maryland is under military rule. Partly for military convenience, and partly for chastisement, her free institutions have been temporarily suspended by the War Department, and her name blotted out, for the time, from the list of free governments. It is not the desire of the Committee to aggravate by comment the humiliation which

is inseparable from these facts in their simplest statement. It is not their disposition to provoke a review of the unhappy policy in her own councils, which has contributed to plunge the State into so hopeless and helpless a condition. They wish to deal only with the practical questions it suggests for present determination; and this brings them to consider the recommendations of the message transmitted by the Governor.

The Committee understand his Excellency as recommending, in general terms, a policy of peace. So far as that naked proposition goes, they give to it their warmest and heartiest concurrence; but they are not sure that they exactly apprehend the mode in which the Governor proposes that the policy he so favors should be carried out. His language is as follows: "I honestly and most earnestly entertain the conviction, that the only safety of Maryland lies in preserving a neutral position between our brethren of the North and South." He then enters into a consideration of the part which Maryland has taken in the sectional contest that has been waged, and adds: "Entertaining these views, I cannot counsel Maryland to take sides against the Federal Government, until it shall commit outrages upon us which would justify us in resisting its authority." What class of outrages would furnish such justification for resistance he does not announce, but proceeds to say: "As a consequence, I can give no other counsel than that we shall array ourselves for union and peace, and thus preserve our soil from being polluted with the blood of brethren. Thus, if war must be between the North and the South, we may force the contending parties to transfer the field of battle from our soil, so that our lives and property may be secure."

The Committee confess their difficulty in perceiving how, consistently with a policy purely pacific, these counsels can possibly be made available. No matter how decidedly and enthusiastically we "array ourselves for union and peace," it is altogether impossible for us to preserve our soil from the pollution of fraternal blood, unless we possess the means and assert the power to force back the tide of war, if it comes surging across our borders. And that we should consolidate and employ such power to the extent which the exigency may demand, is obviously the counsel of the Governor, for he proceeds to tell us, that by the action he advises, we may be able, "if war must be," to "*force the contending parties to transfer the field of battle from our soil*, so that our lives and property may be secure." Surely we cannot "force" belligerent armies from our midst, without employing force of our own. It is out of the question that we can prevent them from making our homes their battle-field, unless we have the strength to repel them, and are willing and prepared to use it.

No peaceful "array" whatever—no legislative protest—no executive remonstrance—from Maryland, can stay the strife of contending squadrons. A deputation from the Peace Society would have been as effectual in arresting a charge at Solferino. If, then, the "neutrality" of the Governor means anything, (speaking with all respect,) it must mean a neutrality armed and resolute—prepared to assert its policy, and able to vindicate it on the field. Otherwise it would be nothing and would come to nothing. It would only irritate both parties and stay the arm of neither.

And yet although this is the result and the only practical result of the recommendation of the Message, it is difficult

to reconcile such a conclusion with the other views which the Governor announces. Upon the authority of "our most learned and intelligent citizens," he admits the right of the Government to transport its troops across our soil. He recognizes the unbroken relation and the continuing loyalty of Maryland to the Union. He does not impeach the constitutionality of the action of the Federal authorities. His protests against the landing of the troops, and the seizure of the railroads at Annapolis, are based upon no denial of the right. They amount to remonstrance and advice, but to nothing more.

His theory is, and he has always steadfastly maintained it, that nothing has occurred to alter the reciprocal rights and obligations of this State and the General Government. The Constitution he believes is still over both, and the old bonds still unite them together. If all this be true, then the State of Maryland can hold no neutrality when the Union is at war. She is part of the Union; at war when it wars; at peace when it is peaceful. She "takes sides" against it the instant that she fails to take sides with it. Neutrality, in such a case, is nullification pure and simple, and an armed neutrality is merely rebellion and not union or peace. The position of his Excellency in the premises is, therefore, in the judgment of the Committee, wholly untenable; and it is not surprising that it should have placed him at so obvious a disadvantage, in the correspondence which he has furnished the House between himself and the astute officers of the Government. Differing from the Governor in opinion as to the course and rights of the Federal authorities, to the wide extent herein before indicated, the Committee have no hesita-

tion is asserting and maintaining the right of the State, and its duty, to protest against the unconstitutional action of the Administration, and refuse obedience to its unconstitutional demands. Recognizing, however, to the same extent as the Governor, the fact that Maryland is still a State of the Union, the Committee cannot counsel this honorable body or the people whom it represents, to assume, under the guise of "neutrality," a hostile relation to the Government, or attempt by any policy whatever, to "force" it from the position in which it is entrenched. If no better argument existed against such a project, a sufficient one would be found in its hopeless futility.

The present—and the only possible present attitude of the State towards the Federal Government is, in the judgment of the Committee, an attitude of submission—voluntary and cheerful submission on the part of those who can persuade themselves that the Constitution remains inviolate and the Union unbroken, or that the Union can survive the Constitution—unwilling and galling submission on the part of those who think and feel differently; but still, peaceful submission upon both sides. It is not for the Committee to ignore this state of things, because of the humiliation which comes with it. They feel it their duty to confess the inexorable logic of facts, and leave the future to be shaped by the people of Maryland, to whom, exclusively, that prerogative belongs, and who, doubtless, will exercise it in their own way and at their own good time.

This expression of the views of your Committee, at so much necessary length, leaves very obvious the recommendations which they ask leave to report, upon the two leading subjects

submitted to their deliberation: the calling of a Sovereign Convention of the people, and the re-organization and arming of the militia of the State.

At the time when the Legislature was called together, there was certainly but little difference of opinion among its members, of all parties, as to the propriety of speedily adopting measures to secure both the objects referred to. Since that time, the rapid and extraordinary development of events, and of the warlike purposes of the Administration; the concentration of large bodies of troops in our midst and upon our borders, and the actual and threatened military occupation of the State; have naturally enough produced great changes of opinion and feeling among our citizens. The members of the Committee, judging from their own correspondence and that of their fellow members, of all shades of opinion, as well as from the memorials and other expressions of the public will, which have reached the House, have no hesitation in expressing their belief, that there is an almost unanimous feeling in the State against calling a Convention at the present time. The reasons for this conclusion are doubtless various, in different portions of the State, and the opinions of individuals as to the probable result of the deliberations of a Convention, at this moment, are of course very wide apart. To the Committee, the single fact of the military occupation of our soil by the Northern troops in the service of the Government, against the wishes of our people and the solemn protest of the State Executive, is a sufficient and conclusive reason for postponing the subject to a period when the Federal ban shall be no longer upon us. It does not become the dignity of the State of Maryland to attempt the performance of

an act of sovereignty, absolute or qualified, at a moment when not only her sovereignty but her Federal equality is subordinated to the law of the drum-head. No election, held at such a time and with such surroundings, could by possibility be fair or free. No result which could be reached by it would command the confidence or secure the willing obedience of the people. The Committee therefore feel it their duty to recommend the postponement of the subject for the present.

For reasons almost identical, the Committee take leave to report against the arming of the State, and the organization of our military defenses at this time. If the holding of a Sovereign Convention were not regarded as a hostile movement by the Federal Government, the re-establishment of the military force of the State, in a condition of present efficiency, certainly would be, however unjustly. It avails nothing to say that the arming and organization of a suitable militia, are declared by the Constitution of the United States to be "necessary to the security of a free State," and therefore especially guaranteed to us as peaceful and fundamental rights. The Constitution is silenced by the bayonets which surround us, and it is not worth while for us to fancy ourselves beneath its ægis. It would be criminal as well as foolish for us to shut our eyes to the fact that we will not be permitted to organize and arm our citizens, let our rights and the Constitution be what they may. The interview of our Commissioners with the President sets that point at rest. It is not easy for free men to realize such a state of things; but it is not our fault that we are helpless, nor our shame that our helplessness is abused.

The Committee respectfully recommend that no action be taken towards the re-organization of the militia at this time,

or the doing of any act which might be construed into hostility to the Government; and that, if any purchase of arms be indispensable, it be confined, at the farthest, to such reasonable quantity as may be manufactured in our own State, for local purposes, and may aid in the equipment of the militia, when a plan for their proper enrolment and distribution shall be matured at some future day. The purchase of such a quantity can give no just ground for complaint in any quarter, as the slightest inquiry will show that the total disuse of the militia system, for many years past, has left us almost wholly defenceless in many parts of the State, and renders some such arrangement indispensable as a measure of domestic police.

The Committee regard it as within their province further to suggest to this honorable body the propriety of adjourning over to some named day, as soon as its present and pressing duties are discharged. In their opinion, the exigencies of the present crisis do not permit a final adjournment, with any proper regard to the responsibilities and dangers which may, at any moment, be precipitated on the State.

Finally, the Committee respectfully submit to the House the following resolutions, and pray to be discharged from the further consideration of the matters before them.

S. T. WALLIS,
J. H. GORDON,
G. W. GOLDSBOROUGH,
JAMES T. BRISCOE,
BARNES COMPTON.

RESOLUTIONS.

Whereas, in the judgment of the General Assembly of Maryland, the war now waged by the Government of the United States upon the people of the Confederate States, is unconstitutional in its origin, purposes and conduct; repugnant to civilization and sound policy; subversive of the free principles upon which the Federal Union was founded, and certain to result in the hopeless and bloody overthrow of our existing institutions; and

Whereas, the people of Maryland, while recognizing the obligation of their State, as a member of the Union, to submit in good faith to the exercise of all the legal and constitutional powers of the General Government, and to join as one man in fighting its authorized battles, do reverence, nevertheless, the great American principle of self-government, and sympathize deeply with their Southern brethren in their noble and manly determination to uphold and defend the same; and

Whereas, not merely on their own account and to turn away from their own soil the calamities of civil war, but for the blessed sake of humanity, and to avoid the wanton shedding of fraternal blood, in a miserable contest which can bring nothing with it but sorrow, shame and desolation, the people of Maryland are enlisted, with their whole hearts, on the side of reconciliation and peace: now, therefore, it is hereby

Resolved by the General Assembly of Maryland, That the State of Maryland owes it to her own self-respect and her respect for the Constitution, not less than to her deepest and most honorable sympathies, to register this her solemn protest

against the war which the Federal Government has declared upon the Confederate States of the South, and our sister and neighbor Virginia, and to announce her resolute determination to have no part or lot, directly or indirectly, in its prosecution.

Resolved, That the State of Maryland earnestly and anxiously desires the restoration of peace between the belligerent sections of the country; and the President, authorities, and people of the Confederate States, having, over and over again, officially and unofficially, declared that they seek only peace and self-defence, and to be let alone, and that they are willing to throw down the sword, the instant that the sword now drawn against them shall be sheathed, the Senators and Delegates of Maryland do beseech and implore the President of the United States to accept the olive branch which is thus held out to him; and in the name of God and humanity to cease this unholy and most wretched and unprofitable strife, at least until the assembling of Congress in Washington shall have given time for the prevalence of cooler and better counsels.

Resolved, That the State of Maryland desires the peaceful and immediate recognition of the independence of the Confederate States, and hereby gives her cordial assent thereunto, as a member of the Union; entertaining the profound conviction that the willing return of the Southern people to their former Federal relations is a thing beyond hope, and that the attempt to coerce them will only add slaughter and hate to its impossibility.

Resolved, That the present military occupation of Maryland, being for purposes, in the opinion of this Legislature, in flagrant violation of the Constitution, the General Assembly

of the State, in the name of her people, does hereby protest against the same, and against the oppressive restrictions and illegalities with which it is attended; calling upon all good citizens, at the same time, in the most earnest and authoritative manner, to abstain from all violent and unlawful interference, of every sort, with the troops in transit through our territory or quartered among us, and patiently and peacefully to leave to time and reason the ultimate and certain re-establishment and vindication of the right.

Resolved, That under existing circumstances, it is inexpedient to call a Sovereign Convention of the State at this time, or to take any measure for the immediate organization or arming of the militia.

REPORT

AGAINST THE SENATE'S PROPOSITION TO SEND COMMISSIONERS TO WASHINGTON, MONTGOMERY, RICHMOND, AND HARRISBURG.

MAY 13, 1861.

REPORT.

To the Honorable, the Speaker of the House of Delegates:

THE Committee on Federal Relations, to whom was referred the Joint Resolution from the Senate, providing for the appointment of a Joint Committee of both Houses, who should select from their own number two members to wait upon the President of the United States, two to wait upon the President of the Confederate States, and two to wait upon the Governors of Virginia and Pennsylvania, respectively, ask leave to report:

That they have considered the subject with all the attention and respect which are so justly due to the high source from which the Resolution proceeds, as well as to the patriotic and commendable motives by which it was suggested. They regret, however, that with every disposition to yield to the opinions and wishes of the Senate, they are unable to concur in the propriety of the measure proposed.

The worthy and benevolent purpose of the missions contemplated by the Resolution is to avert, if possible, the horrors of civil war, by inducing a cessation of hostilities, at least until the meeting of Congress. The Committee have

already reported in favor of the policy indicated, and the Resolutions which they had the honor to propose to that effect, have received the sanction of a large majority of the members of the House, and are now awaiting the action of the Senate, which it is earnestly hoped may be favorable. It is only, therefore, in regard to the means to be employed to serve a common purpose, and not in regard to the purpose itself, that the Committee are reluctantly constrained to differ with the Senate. The grounds of that difference are, briefly, as follows:

The war now actually pending, and the calamities of which may be precipitated upon the country, at any moment, is between the United States and the Southern Confederacy. The States of Virginia and Pennsylvania are only parties to the war in so far as they are members of their respective confederations. They can form no treaties, nor can they enter upon any arrangements touching the cessation of hostilities, except through their respective general governments. Although, therefore, they are our immediate neighbors geographically, it is not perceived that they occupy a political position which renders it more proper that we should communicate directly with them, in regard to a suspension of the war, than with any other of the States belonging to the two sections of the dissevered Republic. Independently of this objection, applying equally to the missions proposed to Virginia and Pennsylvania, there are especial reasons against opening any diplomatic or legislative intercourse with the latter State, which address themselves with peculiar force to the minds of the Committee. In no State of the Union, not even in Massachusetts, has the feeling of animosity to the

whole South, and especially to Maryland, been displayed with more intensity of rancor than in the State of Pennsylvania. The long-established relations of friendship and good neighborhood, which, it was supposed, would have modified the resentments of any conflict in which the two States might, unhappily, be arrayed against each other, seem rather to have added bitterness to the hostility of the people of Pennsylvania against us. The course of their legislation, the tone of their press, and the current of their popular sentiment and action, have all been governed by the most inflamed vindictiveness towards our State and her citizens. The conservative and kindly feeling which undoubtedly exists in many quarters of Pennsylvania, to a large extent, in our behalf, has been completely stunned and overpowered by the rampant passion of the dominant party; and a law of treason and sedition, cunningly and despotically fashioned, has put an end to all free expression of sympathy or opinion. Judging from the popular demonstrations and abuses of the law which have already put in peril the lives and liberty of so many of our citizens, when found upon the other side of the border, the Committee have no reason to feel assured that the observance of civilized nations would be respected in favor of any representatives whom we might send to Harrisburg. But even if it were otherwise, they do not think it would be compatible with the dignity of the State, or result in any practical good for which a point of dignity might be waived, to inaugurate any new relations with Pennsylvania at present.

So far as concerns the missions proposed to Washington and Montgomery, the reasons adverse to the Resolution referred, are equally conclusive to the minds of the Committee. It is

but a few days since a commission of three of our most discreet and distinguished citizens visited Mr. Lincoln and his Cabinet at the request of this General Assembly. It is true, they were not charged with the duty of proposing a cessation of hostilities; but they were requested to ascertain, and they did fully possess themselves—so far as it was convenient to the Administration to inform them—of its future plans. The reports made by the Commissioners to the two Houses, at the informal meeting held in the hall of this Honorable Body, must have satisfied us all that the Administration has its own fixed purposes, not to be bent by negotiation or personal solicitation, and perhaps, indeed, hardly within its own control, under the pressure of the commercial hostility and jealousy at the North, which of late have become such potent elements in the pending sectional crusade. The Committee do not believe that the President of the United States would willingly entertain any further discussion of his policy with representatives accredited by this State, and they cannot but remember the vain hopes which heralded, and the disappointments which attended and followed the noble and persistent efforts of Virginia to avert the then comparatively distant storm of civil war. What Virginia could not do at that time, Maryland can scarcely do now. It was for this reason that the Committee, in reporting the general Resolutions heretofore adopted by the House, contented themselves with an earnest entreaty to the President, on behalf of this State, to set a truce to the war he has begun. They confess that they proposed it with more of desire than of hope; and they ask leave to repeat their sincere conviction, that if the Senate will give its high sanction to the Resolution referred to, and

the series to which it belongs, the State will have done as much, in the way not only of mediation, but of self-vindication as she can practically compass at this time.

If the Committee are right in their judgment as to the inexpediency of the proposed mission to Washington, that to Montgomery could have no practical result, however well intended, or cordially received. The Confederate States are making war only in self-defence, and are ready to welcome peace, and meet any overtures half-way; but they cannot be expected, and could not with propriety be asked, to arrest their preparations, in the absence of a similar manifestation on the aggressive side.

There are other considerations which the Committee might adduce in support of their conclusion, but they deem it unnecessary to enlarge upon the subject. They respectfully ask leave to report unfavorably upon the Joint Resolution referred to them.

S. T. WALLIS,
J. H. GORDON,
G. W. GOLDSBOROUGH,
JAS. T. BRISCOE.

REPORT

OF THE

COMMITTEE ON FEDERAL RELATIONS

UPON THE

MESSAGES OF THE GOVERNOR,

IN REGARD TO THE ARBITRARY PROCEEDINGS OF THE UNITED STATES' AUTHORITIES, AND THE GOVERNOR'S CORRESPONDENCE WITH THE UNITED STATES GOVERNMENT.

JUNE 11, 1861.

REPORT

Of the Committee on Federal Relations upon the Messages of the Governor, June 11, 1861.

To the Honorable, the Speaker of the House of Delegates:

THE Committee on Federal Relations to whom were referred the two communications from His Excellency the Governor, bearing date the 5th instant, having duly considered the same, respectfully ask leave to make the following report:

In one of the messages in question, the Governor informs the House, in reply to its respectful inquiry, that "as a matter of course" he has taken no action "to protect the citizens of the State in their persons and property" from illegal arrests, outrage, and injury, on the part of the military authorities of the Federal Government now exercising forcible jurisdiction over our people; for the reason that he has "received no official information of the arrest spoken of" in the order of the House, "nor has any complaint or demand for his interference been made to him by any person claiming to have been arrested in the manner alleged" therein. As

the House is unhappily aware, the outrages referred to are of a character so flagrant and notorious as to have attracted the attention and comment of the whole press of the State and country, and to have filled with the deepest indignation and anxiety, not only the reflecting people of Maryland, but all good citizens throughout the land who are not willing to sacrifice its free institutions forever, to the mad excitements and usurpations of the hour. It is safe to say that the Governor cannot have opened a newspaper, nor have taken part in a public conversation, since the adjournment of the General Assembly last month, without having had his attention called to the engrossing subject which he now officially ignores.

In the case of Mr. John Merryman, a respected fellow-citizen of the Governor and of ourselves, an open conflict of authority has taken place between the highest judicial functionary of the Republic, upon the one hand—asserting and maintaining, as became him, the freedom of the citizen and the supremacy of the laws and Constitution—and the Federal Executive, upon the other hand, assuming a sovereign discretion and prerogative to over-ride the Constitution and tread the laws beneath his feet. No case of such absorbing interest has excited the public mind since the Union was established—none is likely to occupy so prominent a place in the judicial annals of the country, as a monument of public liberty assaulted, and manfully, though unsuccessfully defended. Mr. Merryman still lies a prisoner at Fort McHenry, the victim of military lawlessness and arbitrary power—the great remedial writ of Habeas Corpus, and all the guarantees of freedom which it embodies, having been stricken down at one blow for his oppression. Of facts so

startling and so universally known—perhaps the most conspicuous in that series of extraordinary events which have crowded into a few short weeks more than the history of half an ordinary century—your Committee cannot sufficiently express their astonishment that the Governor of the State in the midst of which they have occurred, should require "official information" to suggest the discharge of his imperative official duties in the premises. Of such facts the simple occurrence is notice to all the world—notice which amounts to knowledge, where men honestly desire to know—notice which, at all events, makes inquiry an official obligation, wherever a proper sense of such obligation exists.

The members of the House cannot forget—for it is matter, not only of public notoriety, but of official record—how diligently, a little while ago, his Excellency gave ear to every whispered rumor of conspiracies, and plots, and plans, to seize upon the Federal Capitol and lay violent hands upon high functionaries of the Government. How little he was then disposed to stickle for "official," or any other sort of legitimate "information," his own recorded testimony before the Congressional Committee of Inquiry will sufficiently certify. How zealously, and with what solicitude he dedicated his talents and valuable time to the accumulation and encouragement of the empty gossip referred to, and how much undeserved reproach he brought upon the State and her commercial metropolis by the importance which his official indorsement conferred on it, are matters too recent to have escaped any one's memory. So far as this Committee are aware, there was then no "official complaint or demand" for his Excellency's "interference," from any quarter. It might, therefore,

in the opinion of the Committee, have been fairly presumed, and the House, in adopting its order of June 5th, had not only the manifest right, but was bound to presume that occurrences so momentous to the people of Maryland as the suspension of the Habeas Corpus, and the substitution of military authority for a government of laws, had attracted the Governor's official attention, and had suggested to him the propriety and obligation of some official interposition on his part. Indeed the fact that his Excellency's own official proclamation of May 15th, calling out a portion of the militia of this State, in *quasi* obedience to the demand of the Federal Executive, and in gross violation of the policy announced by this General Assembly, for the State of Maryland, but the day before—was contemptuously "countermanded" the day after, without more ado, through the newspapers, by a recruiting captain of the U. S. Army—might of itself have been deemed sufficient to furnish to his Excellency a reasonable official intimation that the institutions and established government of the State were not exactly in their normal condition.

When it is further considered, however, that the Governor himself was personally present, as this whole Honorable Body is aware, when a venerable and prominent citizen,[1] a useful and respected member of this House, proceeding to his home from the discharge of his official duties here, was arrested by military force, without color of lawful authority and hurried into illegal imprisonment within the walls of a Federal fortress, your Committee are at a loss to conceive the extent of the evidence which his Excellency might require to give him "official information" of any fact whatsoever. They cannot

[1] Mr. Ross Winans.

hope that any demonstration which it is in the power of this House to furnish, could add strength to the testimony of his Excellency's own bodily senses. But believing that no government is faithful to its trusts which does not feel and resent the oppression of a single and the humblest citizen as a wrong done to the State and to every man within its borders, and believing, too, that the Executive of Maryland, clothed with all necessary powers, and bound by his oath "to take care that the laws be faithfully executed," is of all others (and especially in the absence of the Legislature) the person upon whom the duty of vindicating the independence of the Commonwealth and the supremacy of its laws, to the best of his ability, devolves; your Committee are constrained to regard the silence and inaction of the Governor, under the circumstances in question, as a grave and inexplicable dereliction of public duty.

In his other message, the Governor responds to the thrice-repeated and respectful solicitation of this Honorable Body, that he would be pleased to furnish it with copies of his correspondence, since the 4th of March last, with officers of the Federal Government. As the House will remember, his Excellency was respectfully requested, in its last order of June 5th, to communicate his reasons for withholding such correspondence, should he decline to transmit it. His response is as follows; neither more nor less:

"I have already furnished your Honorable Body with copies of all correspondence between myself and officers of the General Government which I deem it necessary to lay before you."

The Committee are compelled to presume that in his elevated and honorable position, rendering doubly obligatory in

official intercourse the observance of those courtesies which are an instinct among private gentlemen, his Excellency could not have so far forgotten himself as to have used the curt language which has been quoted, with any purpose of intentional disrespect. They therefore pass, without further comment, to a consideration of the substance of the message.

The 28th section of the Third Article of the Constitution expressly provides that the House of Delegates "may call for all public or official papers and records, and send for persons whom they may judge necessary, in the course of their inquiries concerning affairs relating to the public interest." If, in response to such a call the Governor, or any other public officer, can set up his judgment, as to the propriety of the requisition, against the judgment of the House, and can refuse to obey the call because he does not "deem it necessary" to furnish what the House "may judge necessary" to demand, it is quite obvious that the constitutional provision just quoted is a nullity, and the powers of the House, as "the grand inquest of the State," are altogether at an end. This Honorable Body cannot, of course, tolerate, from any quarter, so manifest an insubordination to its plain constitutional authority; and the undersigned accordingly recommend the appointment of a special committee to inspect the Executive records in the custody of the Secretary of State, or elsewhere, with power to institute such inquiries, and send for such persons and papers, as may be necessary to place the House in possession of all needful information in regard to the official relations between the General Government and the Executive of the State since the 4th of March last, or since the commencement of our unhappy national troubles.

The undersigned assume, from the tenor of the Governor's message, that such correspondence as this House has inquired for, has in fact taken place. Were it otherwise, his Excellency would of course have so stated, and would not have intimated the contrary for the sake of making what in such case would be a purely gratuitous issue with the Legislative department of the Government. Should such correspondence have been had, the Executive records will, of course, disclose it, if as your Committee are bound to suppose, the constitutional duty of recording "all official acts and proceedings" has been faithfully discharged.

Your Committee recommend the adoption of the following Order and Resolutions in conformity with the views above expressed.

S. T. WALLIS,
J. H. GORDON,
JAMES T. BRISCOE,
G. W. GOLDSBOROUGH,
BARNES COMPTON.

ORDER.

Ordered.—That a committee of three be appointed by the Speaker with instructions to examine the Executive records and call for such persons and papers as they may deem necessary, to enable them to ascertain and report to the House, without delay, the precise character of the relations established by the Executive of this State with the Federal Government, since the commencement of our existing national troubles.

RESOLUTIONS.

Whereas, Ross Winans, a member of the House of Delegates of Maryland, from the City of Baltimore, on his way to his home from the discharge of his official duties, on the 14th of May last, was arbitrarily and illegally arrested, on a public highway, in the presence of the Governor of this State, by an armed force under the orders of the Federal Government, and was forcibly imprisoned and held in custody, thereafter, at Annapolis and Fort McHenry, without color of lawful process or right, by the command and at the arbitrary will and pleasure of the President of the United States; and

Whereas, Sundry other citizens of Maryland have been unlawfully dealt with in the same despotic and oppressive manner, by the same usurped authority, and some of them have, in fact, been removed by force beyond the limits of the State of Maryland and the jurisdiction of her tribunals, in utter violation of their rights as citizens, and of the rights of the State, as a member of the Federal Union; and

Whereas, The unconstitutional and arbitrary proceedings of the Federal Executive have not been confined to the violation of the personal rights and liberties of the citizens of Maryland, but have been extended into every department of oppressive illegality, so that the property of no man is safe, the sanctity of no dwelling is respected, and the sacredness of private correspondence no longer exists; and

Whereas, The Senate and House of Delegates of Maryland, recognizing the obligation of the State, as far as in her lies, to protect and defend her people against usurped and arbi-

trary power—however difficult the fulfilment of that high obligation may be rendered by disastrous circumstances—feel it due to her dignity and independence, that history should not record the overthrow of public freedom, for an instant within her borders, without recording likewise the indignant expression of her resentment and remonstrance: now therefore be it

Resolved, That the Senate and House of Delegates of Maryland, in the name and on behalf of the good people of the State, do accordingly register this, their earnest and unqualified protest against the oppressive and tyrannical assertion and exercise of military jurisdiction, within the limits of Maryland, over the persons and property of her citizens, by the Government of the United States, and do solemnly declare the same to be subversive of the most sacred guaranties of this Constitution, and in flagrant violation of the fundamental and most cherished principles of American free government.

Resolved, further, That these resolutions be communicated to the President of the Senate, and the Speaker of the House, to the Hon. James Alfred Pearce and the Hon. Anthony Kennedy, Senators of Maryland in the Senate of the United States, with the request that they present the same to the Senate, to be recorded among its proceedings, in vindication of the right, and in perpetual memory of the solemn remonstrance of this State against the manifold usurpations and oppressions of the Federal Government.

MEMORIAL

OF THE

POLICE COMMISSIONERS OF BALTIMORE,

JULY, 1861.

[DRAWN UP BY S. T. WALLIS.]

MEMORIAL.

To the Honorable, the Senate and House of Representatives of the United States.

The Memorial of Charles Howard, William H. Gatchell, *and* John W. Davis, *Citizens of Baltimore in the State of Maryland, respectfully represents:*

That between two and three o'clock, on the morning of the 1st of July instant, they were severally aroused from sleep, at their respective dwellings, by large bodies of soldiers of the army of the United States, quartered in or about this City, and were removed, by force and against their will, from their homes and families, to Fort McHenry, where they have ever since been confined as prisoners, and now are.

Your memorialists, at the time, received no further information as to the cause of their arrest, than that the same was made by order of Major General Banks, commanding this Military Department, nor have they since been informed of any charges whatever against them, further than those contained in a Proclamation of General Banks issued later in the same day, a copy of which, taken from one of the newspapers of the City, they append hereto.

By reference to the said proclamation, your Honorable Body will perceive that the arrest of your memorialists is alleged to have been made "in pursuance of orders issued from the headquarters of the army at Washington, for the preservation of the public peace in this department:" and is attempted to be justified by the refusal of your memorialists, as Members of the Board of Police of Baltimore, to acquiesce in the legality and effect of a previous proclamation of General Banks, declaring their official authority superseded. The proclamation in question goes on to charge, that your memorialists, after such attempted suspension of their functions, had continued to hold sessions daily; that "upon a forced and unwarrantable construction" of the previous proclamation referred to, they had declared the Police Law to be suspended and their police force to be off duty, "intending to leave the city without any police protection whatever;" and that they had moreover refused to recognize, as policemen, certain persons selected by a Provost Marshal, under General Banks, to act in that capacity. There is a further allegation that the "Headquarters under the charge of the Board, when abandoned by the officers, resembled in some respects a concealed arsenal."

Your memorialists respectfully represent, that together with their colleague Charles D. Hinks, Esq., who was arrested with them, (but has since been discharged, upon his parole, because of ill health,) and the Mayor of the City who has not been arrested, they constitute the Board of Police, a *quasi*-corporation created by the Legislature of Maryland, and having exclusive police jurisdiction in the City of Baltimore. The nature and extent of their functions and duties will be made

known to your Honorable Bodies, by an examination of the Code of Public Local Laws of the State of Maryland, (Art. IV, Sect. 806 to 822 and Sect. 199 to 228 inclusive). It will there be seen that their powers are of the amplest character, and that they not only have control of the whole Police Department of the State, within the City limits, but are likewise charged with the appointment of all Judges of Election, and the conduct of all elections, whether Federal, State or Municipal, to be held in the City; so that every such election is, by special enactment, declared invalid and of no effect, unless held by the Board, and under its control and supervision. It will further appear, by the explicit terms of the law, that no police force can lawfully exist in Baltimore, unless appointed and governed by the Police Board, and that neither officers nor men, when appointed, have any official authority or jurisdiction, independently of or apart from the Board; but that all of them are merely employed, in pursuance of the express provisions of the law, "to enable the Board to discharge the duties imposed on them." By Section 819 of the Article of the Code already referred to, heavy pecuniary penalties are imposed upon any person who shall forcibly resist or obstruct the execution or enforcement of any of the provisions of the law, in the premises, or disburse any money in violation thereof, and it is made the duty of the Board to enforce such penalties by civil action, leaving the parties who may have violated the law, still subject to indictment for any criminal offense committed by them in the course of such violation. Your memorialists, with their colleague, Mr. Hinks, were duly appointed by the Legislature of Maryland, at its January

Session, 1860, to carry out the provisions of the police system, of which they have thus indicated the leading features, and they duly took the oath to do so, which is prescribed by the law. The term of office of Messrs. Howard and Davis does not expire until the 10th of March, 1862, and that of Messrs. Gatchell and Hinks extends for still two years longer. None of them are subject to removal, except by the Legislature of Maryland, from which they derive their authority and functions. All the provisions of the Police Law were fully tested by legal proceedings instituted in the Superior Court of Baltimore City shortly after its enactment, and carried, on appeal, to the Court of last resort in the State. The result was an unqualified recognition by all the Judges, of the conformity of the law, in all particulars, with the Constitution of Maryland and that of the United States.

Such being the official tenure and lawful and constitutional powers and duties of your memorialists, they were astonished on the 27th of June last, to be visited, without previous notice, by Col. Kenly, of the Maryland Volunteers, then encamped near Baltimore, and to be informed by that officer, that he was instructed by Major General Banks, to read them a proclamation declaring their official authority superseded, and appointing Col. Kenly Provost Marshal to administer the Police Law of the State in their stead. Of that proclamation a copy is appended to this memorial, by which it will be seen, that although various causes are alleged for the arrest of Col. George P. Kane, Marshal of Police, and for superseding his official authority likewise, no ground of complaint whatever is pretended to exist against the Board of

Police, and no excuse is vouchsafed for the overthrow of the constitutional authority of the State of Maryland, vested in your memorialists, and of course incapable of being constitutionally or lawfully divested, by any federal authority, civil or military.

This City of Baltimore being entirely commanded by large bodies of federal troops stationed around it, and it being wholly impossible for your memorialists to offer any effective resistance to the illegal proceeding of General Banks, they had no alternative but to submit to force, and to vindicate, as far as practicable, the authority of the State of Maryland and their own personal and official rights and self-respect, by protesting against such proceeding as an arbitrary and unconstitutional exercise of military power. They accordingly adopted the preamble and resolutions likewise hereto appended. It is in this act and in their continuing their sessions, under and in pursuance of the law, that General Banks, in his proclamation issued on the day of their arrest, professes to find justification for his unwarrantable and unlawful violation of their personal liberty. It is no part of the intention of your memorialists to enter into any discussion of the allegations of that proclamation, further than to say, that it is wholly untrue, as therein alleged, that they continued to hold the Police force of the State of Maryland in the City of Baltimore, subject to their orders, for any purpose inconsistent with the peace or security of the Government. They declared the active operation of the Police law to be suspended, for the obvious and unanswerable reason, that the forcible suspension of the functions of the Board which alone had authority to administer the law, necessarily paralysed the

law also. They declared the Police force appointed by them to be still an existent body, because the law creating the force forbids the dismissal of the men, except for cause, and then by the Board of Police alone, after trial had. They declared it to be still subject to their orders, for so long as the force exists it cannot be subject, under the law, to any other. They refused, as matter of obvious duty, to recognize as policemen the parties named by Col. Kenly to act as such, for they assumed it, as they still consider it, to be beyond dispute, that Col. Kenly could have no lawful right to appoint policemen, under the laws of Maryland, whatever his authority may have been as a military officer, (which they do not propose to consider,) to appoint military subordinates in the stead of policemen, outside of those laws or in derogation of them. The attempt by Col. Kenly to enforce such Police appointments, and all efforts of his nominees to act thereunder, were moreover punishable offences under the Police law, the penalties of which it was the sworn duty of your memorialists to enforce, and in the violation of which it was impossible that they could acquiesce. But your memorialists distinctly and emphatically deny that they had any other purpose in their official protest and action, than to fulfil their manifest and sworn obligations, and to maintain the dignity and assert the authority of the laws of Maryland which were entrusted to their hands for execution, but which they were precluded by force from executing. They solemnly declare, that if they had been permitted to continue in the exercise of their functions, after the arrest and imprisonment of the Marshal of Police, on the 27th of June, they would have continued to discharge their duties, as they had discharged them, thereto-

fore, in all respects faithfully, impartially, and to the best of their ability, in obedience to the laws and the constitution, and they asseverate, and will maintain, that the imputation of any other intention or purpose on their part is wholly destitute of foundation in fact. The statement in regard to the "concealed arsenal" at the Marshal's Office, they do not deem it necessary to allude to, further than to say, that it is perfectly notorious and has been fully shown by the Message of the Mayor to the City Council of Baltimore, that the arms in question were the lawful property of the city; that they were insignificant in quantity, constituting but little more than the customary armament of the force, for its public duties, and were lawfully concealed, to prevent unlawful seizure. Your memorialists therefore respectfully represent that the grounds set up by General Banks in his proclamation give to their arrest and imprisonment no color of justification or necessity.

And as to the proclamation of General Banks issued on the 27th of June, announcing the arrest of the Marshal of Police and declaring his official authority to have been superseded, these memorialists respectfully say, that the charges against that officer, contained therein, are equally without foundation, so far as they believe or have any reason to suspect. They have personal knowledge of the fact, which is equally well known to all impartial citizens of Baltimore, that the official duties of Col. Kane have been discharged, throughout, with singular ability, integrity and courage, and never more conspicuously, or in better faith, or at more imminent risk of his own life, than in the protection of the troops of the Federal Government, on the 19th of April. Of the police

force, placed under his command by these memorialists, and selected wholly without reference to their political opinions (as the law and the official oath of your memorialists require) your memorialists can say, without exaggeration, that they do not believe a body of men can be found, anywhere, more entirely devoted to the conscientious discharge of official duty, or less justly liable to the accusation of entering into unlawful combinations themselves, or encouraging or permitting such combinations by others. Down to the moment of the suspension of the active duties of the force, by General Banks, these memorialists have pride in asserting, that no community ever acknowledged, more universally than the citizens of Baltimore, and none ever had better reason to acknowledge, the successful operation of a police system, in securing the strictest enforcement of the laws, the amplest protection of private rights and the most rigid maintenance of public order. Your memorialists further say, that with every opportunity afforded by their official position and every energy stimulated by their sense of duty, to ascertain the existence of all unlawful combinations or associations within their jurisdiction, they have no reason whatever to suspect that any such combinations did in fact exist, as alleged by General Banks in his proclamation of June 27th, and they confidently assert their conviction, that his allegation to the contrary was founded upon false information, communicated to him by designing persons, and cannot be sustained or countenanced by credible evidence of any sort. But even if your memorialists were and are altogether mistaken in these particulars: if the Marshal of Police had been faithless to his obligations as charged, and had been willing or able to seduce the men under his command from theirs

also: it was still only necessary for General Banks to furnish the Board of Police with the slightest evidence to that effect, and your memorialists would have given to his suggestions the most prompt and respectful consideration. They would have suspended or removed the Marshal, if such action had been proper, and would have placed beyond question their own disposition and ability to discharge the whole of their duty in the premises. If General Banks, even without advising them, had seen fit to arrest the Marshal of Police, upon any charge which might have been deemed sufficient to justify such a step, your memorialists would have taken care to govern the police force, efficiently and properly, during his confinement. The legality of such arrest would have been a question for Col. Kane and not your memorialists to consider, but either of the courses suggested would have fulfilled the purposes and have met the exigency announced in the proclamation. General Banks, acting doubtless in conformity with his orders, adopted neither the one course nor the other, but assuming jurisdiction not only over the person of an alleged offender, but over his official functions likewise, saw fit not only to arrest and imprison him, but to dismiss him from his place as a public officer of this State, (which only your memorialists could lawfully do,) and to supersede the lawful authority of your memorialists besides. Knowing that such a proceeding could not, by possibility, be justified by anything in the laws or Constitutions of Maryland or the United States, your memorialists were compelled, by every consideration of sworn duty, to treat the same as an arbitrary act of force and usurpation, no matter by whose orders it might have been committed, or under what pretexts it was sought

to be excused. No construction which it was possible for them to give to the proclamation of the 27th of June could have brought them to any other conclusion than that it was their bounden duty to enter their protest against it.

They therefore deny that the construction which they adopted was either "forced" or "unwarrantable," as charged in the proclamation of July 1st, and they emphatically protest against the truth of the further allegation contained in the latter document, to the effect that their official course upon the occasion was dictated by a purpose to "leave the City without any police protection whatever." If indeed they had entertained such a purpose, they respectfully suggest that it was not a matter with which any officer of the Federal Government had any rightful concern, how much soever it would have furnished their fellow-citizens with just cause of complaint. But they entertained no such purpose. On the contrary they aver and are prepared to show, that when General Banks, by his proclamation of June 27th, interrupted the exercise of their lawful authority, the City was thoroughly protected, in all particulars, by your memorialists and the force under their command; that its tranquillity was perfect; its peace was neither disturbed nor threatened; the rights of person and property, of all men, were inviolate: the civil authorities of the State and City were in the beneficial and effective exercise of all their functions, and the laws were supreme, except in so far as interfered with by the military power. If therefore the City was left without protection on the 27th of June, it was the fault, and upon the responsibility, not of your memorialists, but altogether of that Department of the General Government, by which the constituted authorities of the State

were superseded, and the protective provisions of its laws deprived of their vitality. If General Banks himself were unlawfully superseded by force, he surely would not regard it as just, in his captors, to accuse him of leaving his Department without protection, because he refused, as a man of courage and honor, to acquiesce in their violent suspension and assumption of his functions. Your memorialists claim to be judged, officially and personally, by no lower standard of dignity, responsibility or honor. As public officers, and men of ordinary integrity, it must be obvious to your Honorable Bodies that they could not lend themselves, in any way, to what they knew to be a palpable violation of the law they had sworn to support. They could not transfer, or acquiesce in the transfer to General Banks or Col. Kenly of an authority which the law commanded them to exercise exclusively themselves. They could not authorize their police force to serve under any command or control but their own, in the face of the express provisions of the law to the contrary. They could not expose their officers and men to civil and criminal responsibility by leaving them on duty, under unlawful orders, which could afford them no protection before the tribunals of justice. Your memorialists had no choice therefore but to protest as they did: to declare their force off duty, and leave the military authority to deal, on its own responsibility, with the exigency it had seen fit to create.

In entering, thus at large, into a discussion of the grounds set up by General Banks in justification of their arrest, your memorialists have been governed, altogether, by a desire to vindicate their official and personal character and conduct from unfounded and disparaging imputations, and to demon-

strate the gratuitous character of the injustice against which they appeal to Congress for relief. They are in no wise to be considered as thereby recognizing, for an instant, the right of the War Department, or of any officer acting thereunder, to proceed against them in the mode adopted, even if the accusations which they have repelled were perfectly well founded. The State of Maryland is one of the States of the Union. She is at peace with the Government. Her people are disarmed, and her territory is occupied by an overwhelming military force. Martial law has not been proclaimed among her people, but on the contrary all intention to set it up or enforce it is disavowed, in the most explicit way, in the proclamation of June 27th. The Federal Courts, and those of the State are in full and undisturbed operation, so far as citizens not belonging to the military force are concerned, and process is served without obstruction, and is obeyed without resistance by all except those in military authority. If therefore, your memorialists were charged with any offence known to the law, there was and is nothing to prevent their arrest and detention by the civil arm, in due course, and upon proper and lawful warrant supported by oath, as prescribed and required by the Constitution. But they respectfully submit, that in the proclamation by which their arrest is sought to be justified, there is no allegation of any matter or thing which, if sworn to in proper form of law, would authorize the issuing of process against them, by any judicial tribunal. If they were so unfortunate as to place an erroneous construction upon the first proclamation of General Banks, as he alleges, they are not aware of any statute of the United States which renders such a mistake a penal offence. If it be a crime, on their part, to regard as

illegal and wholly null, the attempted suspension, by a Federal Officer, of their functions as constituted authorities of the State of Maryland, they have been unable to learn by what provisions of the Constitution and laws such an offence is created or defined. If they are lawfully punishable for holding, subject to their orders, a police force which the laws of Maryland made it their duty so to hold, and for refusing to recognize as public officers of Maryland, the appointees of General Banks, whom they were bound under the laws of Maryland to prosecute as offenders, for attempting to exercise police functions, they are at loss to conceive under what head of the penal law such criminality on their part exists. They mean no improper reflection when they assert their belief, that no law officer of the Government would venture to ask for a warrant, upon an affidavit of the facts recited in the proclamation of July 1st, and that no competent tribunal would hesitate to quash such a warrant if issued. They know no principle of criminal jurisprudence, under free institutions, which would authorize even the Courts of recognized jurisdiction to sanction the arrest and confinement of a citizen, upon the indefinite allegation of his entertaining "some purpose, not known to the Government," but still alleged to be "inconsistent with its peace or security."

But be this as it may, these memorialists respectfully insist, that if they are charged with any offence which is known to the laws, it is their constitutional right, as citizens of the United States, to be dealt with according to law. If they are charged with no such offence, it is equally their constitutional right to have the fact recognized, and to enjoy their personal liberty. They have, through their counsel, respectfully asked of General Banks a statement of the grounds of

their imprisonment, and have challenged an investigation of any and all charges affecting either their personal or official integrity or their fidelity to the laws and the constitution. No such statement has been made to them; no such investigation has been granted and no hope has been held out to them of any speedy relief from the unjust and unlawful imprisonment under which they are suffering. In the meantime, they are withdrawn from their homes and separated from their families; their public duties are unlawfully committed to other hands; their private interests are exposed to detriment and perhaps ruin, and they themselves are held, as malefactors, before the country, and are compelled by force to endure mortification and obloquy. The arbitrary suspension of the Writ of Habeas Corpus has of course deprived them of the means provided by law for their deliverance, and unless your Honorable Bodies should see fit to relieve them, they are wholly without means of present redress. They therefore most respectfully and earnestly invoke the immediate interposition of Congress in their behalf. They repeat that they have administered their public trust faithfully, impartially and to the best of their ability, and have not used the Police force under their control, nor have they permitted it nor contemplated permitting it to be used for any other purpose, than the legitimate and faithful discharge of its duties, as prescribed by law. As private citizens, they invite scrutiny, likewise, into their conduct, in every respect in which it may be lawfully impugned, and they assert their readiness to meet, without a moment's delay, any charge which may be responsibly laid against their individual or official proceedings. As citizens of the United States, they therefore appeal to your Honorable Bodies for relief from oppression and unconstitu-

tional wrong. As public officers of the State of Maryland, they protest against the usurpation of their official authority by an officer of the United States Army and they protest the more strongly, because the usurpation against which they remonstrate is not an irresponsible proceeding of the officer in question, but the advised and deliberate act of the War Department itself. They are aware that the President of the United States has called upon Congress to sanction the suspension of the Habeas Corpus, and other acts which have been done by the Executive Department, upon its responsibility, without previous sanction of law. But the President has not asserted, in his Message, any right on the part of the Federal Government to depose and appoint State officers, or annul laws of the States constitutionally enacted, nor has he suggested any power in Congress to clothe him with any such authority. He has asserted no right to do wrong to individuals, nor has he asked the interposition of Congress to such an end. But whatever may be the claims of the Executive, your memorialists respectfully insist that the demands of the Constitution and of individual right and public liberty are very far above them, and they throw themselves therefore for redress and deliverance upon the justice and authority of the representatives of the people. They have no other recourse against arbitrary power and military force; and they demand, as matter of right, that their case be investigated by Congress or remitted to the tribunals of justice to be lawfully heard and determined.

CHARLES HOWARD,
WILLIAM H. GATCHELL,
JOHN W. DAVIS.

REPORT AND RESOLUTIONS

OF THE

JOINT COMMITTEE

OF THE SENATE AND HOUSE OF DELEGATES OF MARYLAND,

UPON THE

REPORTS AND MEMORIALS OF THE POLICE COMMISSIONERS

AND THE

MAYOR AND CITY COUNCIL OF BALTIMORE.

AUGUST 5, 1861.

REPORT.

IT is well known to the members of both Houses, that for several years prior to the commencement of the regular session of the Legislature of Maryland in January, 1860, a state of things had existed and been developing itself in the city of Baltimore, which imperatively demanded the interposition of the law-making power. It is needless to dwell upon the causes or magnify the degree of the evils referred to, it being matter of public notoriety that the laws for the personal protection of the citizen, and especially those which guaranteed the free and inviolate exercise of the elective franchise, had almost wholly ceased to be practically operative, and an organized system of lawlessness, violence and terror had usurped their place. The extent to which the city of Baltimore had suffered, not only in her good name, but in her material prosperity, from the causes referred to, is familiar to the public at large, and the subject had for some time occupied the serious attention, as it largely concerned the interests, of the whole people of the State. At the elections held in the autumn of 1859, the outrages in Baltimore, under the eyes of the municipal authorities, were of so flagrant and insufferable a character, as to raise the direct and unavoidable issue

between anarchy and civil government. Proofs of the most overwhelming conclusiveness having been furnished to the General Assembly at its regular session referred to, there was no recourse but to take vigorous steps to re-establish the supremacy of the laws. By the Act of 1860, ch. 7, (incorporated in the 4th article of the Code of Public Local Laws, beginning at section 806,) all police authority previously delegated to the corporation of Baltimore was accordingly withdrawn, and the same was conferred, with greatly enlarged powers, upon a Board, called the Board of Police, composed of five members. Of these, it was provided that four, who were called "Commissioners," should be elected by the Legislature for designated terms of years, at the expiration of which, their successors were to be appointed in the same manner. It was further enacted, that the Mayor of the city, for the time being, should *ex officio* be a member of the Board. Messrs. Charles Howard, William H. Gatchell, Charles D. Hinks and John W. Davis, citizens of Baltimore, gentlemen of great intelligence and fitness, and of the most approved integrity and purity of character, were chosen by the Senate and House of Delegates as the first Commissioners, and their names appear in the statute-book accordingly. The official term of Messrs. Howard and Davis will expire on the 10th of May, 1862; that of Messrs. Gatchell and Hinks continues until the 10th of May, 1864.

The extent of the powers conferred upon the Board by the law creating it, is so well known to both houses as to supersede the necessity of recapitulation. It is sufficient to say, in general terms, that their authority is of the amplest description, embracing the entire police power of the State, within the limits

of Baltimore, and the right of pursuit and arrest, in certain cases, throughout the whole of the State. By a subsequent Act, passed at the same session, (ch. 9,) and incorporated in the same article of the Local Code, beginning at section 199, the division and re-division of the city into election precincts; the appointment of judges of election in the city, and the holding of all elections therein, whether Federal, State or Municipal; were added to the powers and duties of the Police Board; and it was expressly enacted, that no election should be valid unless held in conformity with the provisions of the two statutes referred to, and unless under and subject to the exclusive control and direction of the Board. The enforcement of the general and local election laws, in many enumerated particulars, and the recovery of penalties affixed to their violation, were comprehended within the scope of the responsible obligations thus imposed on the officers in question. Everything, in fine, in the way of legal enactment, which could guarantee the freedom and purity of the ballot-box, protect the rights of person and property, and secure the maintenance of public order in the chief city of the State, was committed to the Board for execution. All the penal sanctions which could be reasonably devised to strengthen their hands for usefulness and protect them from unlawful interruption and interference, will be found to have been fully provided, for it was the express and especial purpose of the Legislature, for sufficient and well known reasons, to guard against any and every unauthorized intrusion upon the important functions which the State of Maryland had deemed it necessary to exercise through officers of her own selection. It is matter of public notoriety, that the laws in question were assailed with

all the bitterness of partisanship, and that the police law, in particular, was resisted by the then municipal authorities of Baltimore. A legal proceeding was the consequence, in which the validity of the new enactments, under the Constitution of the State and the Union, was put to all the tests which professional ingenuity and ability could devise. The controversy resulted in the complete triumph of the new system, its constitutionality having been placed beyond controversy by the prompt and unanimous decisions of all the Judges, in the Appellate as well as the inferior tribunal.

Sanctioned thus by the Legislative and Judicial departments of our State Government—confessedly within the constitutional limits of State authority, and beyond all pretence of objection or invalidity upon any ground of antagonism to the Federal Constitution—the police system, inaugurated as has been said, was put into successful operation in the spring of 1860. That it was faithfully, fairly and honestly administered, with great ability and vigor, and in the spirit of impartiality and freedom from political influences and corruption, which most especially suggested its enactment, your Committee would be wanting to truth and justice were they not emphatically to declare. So undeniably was this the case, that perhaps the warmest and most repeated testimonials to such effect were furnished by the presses most hostile, upon party grounds, to the creation of the Board, and originally most violent in its denunciation. No candid person, let his political opinions or feelings be what they may, will venture to deny, that the organization and administration of the Police Board, under the laws referred to, were at last hailed by the whole community of Baltimore as a blessing, and that a sense of security

and good government, never felt there before, had diffused itself among all classes in consequence, and had already given a new impulse to the industry and prosperity of the city. Never had any Legislature better reason than the present, to congratulate itself upon having set in motion a perfectly successful scheme of large and beneficial public policy. Every election which has been held in the city since the police law was passed, has not only illustrated the fidelity and integrity of its administration, but has given it the most conclusive indorsement of popular approval.

Your Committee have deemed this brief review of the creation and functions of the Board of Police and of the manner in which its general duties have been discharged, not only an act of justice to the members of the Board, but necessary to the public and thorough understanding of the grievances which are more particularly the object of the memorials under consideration. The more recent and absorbing facts connected with the case of the memorialists are, in substance, as follows:

On the 27th day of June last, the city of Baltimore and State of Maryland being in the enjoyment of entire tranquility, except in so far as the same was interrupted by the presence and transit of large bodies of troops in the service of the General Government, a proclamation was issued by Major General Banks, of the U. S. Army, commanding the Department of Annapolis, in which he informed the public that "by virtue of authority vested in him, and in obedience to orders as Commanding General of the Military Department" alluded to, he had arrested and detained in custody Col. George P. Kane, the Marshal of Police of the city of

Baltimore. Disclaiming all purpose, and announcing that his instructions did not authorize him, "to interfere in any manner with the legitimate government of the people of Baltimore or Maryland," Gen. Banks went on to charge the existence, in his Department, of unlawful combinations of men, organized for resistance to the laws of the United States and of Maryland, providing hidden deposits of arms and ammunition, encouraging contraband traffic with the enemies of the country, and stealthily waiting opportunity to combine their means and forces with those in rebellion against the authority of the Government. Of these combinations he charged that Col. Kane was "believed" to be cognizant, and that he was "both witness and protector to the transactions and parties engaged therein," and consequently could not be regarded by the Government as "otherwise than at the head of an armed force hostile to its authority, and acting in concert with its avowed enemies." The Proclamation then announced that "for this reason" Gen. Banks, "superseding" Col. Kane's "official authority and that of the Commissioners of Police," had arrested and detained Col. Kane; and "in further pursuance of my instructions," he added, "I have appointed, for the time being, Col. Kenly, of the first regiment of the Maryland Volunteers, Provost Marshal in and for the city of Baltimore, to superintend and cause to be executed the Police Laws provided by the Legislature of Maryland, with the aid and assistance of the subordinate officers of the Police department. And he will be respected accordingly."

On the morning of the same day, Col. Kenly proceeded, by the orders of Gen. Banks, to the office of the Board, and read

them this Proclamation, by way of notifying them that their authority was at an end. He then took immediate possession of the Marshal's office and the Police stations, (all belonging to the Corporation,) and assumed the execution of all police power within the city limits. The Board being of course unable to resist the military power of the Government, had no alternative but to submit to force. They however protested, in a dignified and becoming manner, as officers of the State of Maryland (the Mayor uniting), against the arbitrary subversion of its laws and government by the military authority of the United States, and refused to recognize the right of the officers and men of their police force to receive orders or directions from any authority but their own. Carrying out the obvious spirit, and obeying the letter, of the law which they had sworn to support, and under which, alone, the Board and its officers and men had official existence or authority, they also adopted and published the following resolution:

"*Resolved*, That in the opinion of the Board, the forcible suspension of their functions suspends at the same time the active operation of the Police Law, and puts the officers and men off duty for the present, leaving them subject, however, to the rules and regulations of the service as to their personal conduct and deportment, and to the orders which this Board may see fit hereafter to issue when the present illegal suspension of their functions shall be removed."

Having thus asserted, as was their duty, and in the only mode left to them, the supremacy of the local laws of Maryland within their legitimate locality, the Board refrained from all interference with the proceedings of the Provost Marshal, who at once commenced the appointment of individuals, at

his discretion, to assume the places and discharge the functions of policemen. Not content with thus supplanting the subordinates of the Police Board, he proceeded further and removed the officers in the Fire Alarm and Police Telegraph Departments, who receive their appointments by law from the Mayor and City Council, and substituted appointees of his own in their stead. Things remaining in this unnatural position, on the morning of the 1st of July, the four Commissioners of Police, Messrs. Howard, Gatchell, Hinks and Davis, were arrested at their residences, two or three hours after midnight, by large bodies of troops under the orders of Gen. Banks, and were removed at once to Fort McHenry, and placed for the time under close confinement. When the morning dawned, the principal places of the city were found occupied by masses of artillery and infantry, and sentinels were posted on the lines from the various camps into the heart of the population. In the course of the forenoon a Proclamation appeared from Gen. Banks. It stated the arrest of the Commissioners to have been made "in pursuance of orders issued from the Headquarters of the Army at Washington, for the preservation of the public peace in this Department." By way of justification, it alleged that "the Headquarters under the charge of the Board, when abandoned by the officers, resembled in some respects a concealed arsenal;" that "after recognition and protest against the suspension of their functions," the Board had continued their sessions daily; that upon a forced and unwarrantable construction of the Proclamation of 27th June they had declared the Police law suspended and the Police officers and men off duty for the present, "intending to leave the city without any police protection whatever;"

that they had refused to recognize the officers and men appointed as policemen by Col. Kenly, and finally, held, subject to their orders "now and hereafter, the old Police force, a large body of armed men, for some purpose not known to the Government and inconsistent with its peace and security." It then further stated that the troops in the city had been sent there "to anticipate any intentions or orders" on the part of the Police Board, and concluded with a protestation, as in the previous Proclamation, against "all desire, intention and purpose, on the part of the Government, to interfere in any way whatever with the ordinary municipal affairs of the city of Baltimore."

The Commissioners being thus removed, by force, from their sphere of duty, and held in prison to prevent them from discharging it, the military occupation of the city was continued—the Court House and many public places and offices, which belonged to the corporation, being appropriated to the use of the troops, who thronged the streets and squares also, by night and by day. Meanwhile, being the only member of the Board who had not been deprived of liberty, the Mayor of the city, Mr. Brown, in order, if possible, to relieve his fellow-citizens from the embarrassments and perils of their situation, expressed his readiness to Gen. Banks to undertake the management of the Police, and Col. Kane, with great disinterestedness, was willing to make the sacrifice of his position, so that the Mayor might have no difficulty in consummating the arrangements he proposed. Gen. Banks, however, responded unfavorably to the proposition, after some delay, and on July 10th announced the consummation of his plans in the following proclamation:

"To the People of Baltimore:—

Headquarters, Department of Annapolis,
July 10, 1861.

By virtue of authority vested in me, as Commanding Officer of this Department, I have appointed, and do hereby appoint George R. Dodge, Esq., of Baltimore, Marshal of Police, vice Col. John R. Kenly, who, being relieved of this service at his own request, now assumes command of the First Regiment of Maryland Volunteers, on the Upper Potomac, in the State of Maryland. I have made this appointment at the suggestion and upon the advice of very many influential and honorable citizens of Baltimore, representing its different sections, parties and interests. And in order that public opinion shall have proper influence, and the civil authority due weight, in all municipal affairs, it is my desire and expectation that the Marshal shall receive suggestion, advice and direction from them and other loyal citizens, as from all the Departments of the Government of the city, and in all respects to administer every department of the Police law in full freedom, for the peace and prosperity of the city, and the honor and perpetuity of the United States.

N. P. Banks, Major General,
Commanding Department of Annapolis."

The names of the "influential and honorable citizens," who committed the grave offence of aiding in the subversion of the civil government of the State, within the limits of Baltimore, by force of arms, have not been given officially to the public,

nor has any official disclosure been made of the names of those, under whose "advice and direction" the functions of Mr. Dodge are exercised. These will of course be subjects for judicial inquiry hereafter. The appointment of Mr. Dodge was accompanied by the withdrawal of the troops from the heart of the city, and, from that time to the present, the laws of the State have been silent in Baltimore, so far as concerns its Police Department, and the lives and property of the people have been at the mercy of the organization thus set on foot by the military power of the Federal Government. On the 21st of July a Bill was introduced in Congress, appropriating one hundred thousand dollars for the payment of "the Police organization of Baltimore employed by the United States." It was passed by the House of Representatives under the pressure of the previous question, one of the representatives from Baltimore (Mr. May) having in vain attempted to obtain the floor to discuss it, and having been sharply reprimanded for a breach of the rules of the House, in protesting against it, as "a bill to provide for the wages of oppression." In the Senate it was adopted with equal precipitancy, against the solemn remonstrance of both of the Senators from Maryland. The Congress of the United States thus ratified the action of General Banks in the premises —so far as such action was susceptible of ratification—and the existing Police government of Baltimore, and the suppression of the State authority therein, may therefore be regarded as the combined and deliberate act of the Executive and Legislative Departments of the United States Government.

It remains only to add, that one of the Police Commissioners (Mr. Hinks) having been released from custody, on account of

failing health, the Memorial, of which a copy has been communicated to the Legislature, was presented to Congress on behalf of Messrs. Howard, Gatchell and Davis; protesting against the wrongs inflicted on them, officially and personally; challenging an investigation of any charges against them; and demanding, as matter of right, that their case should be examined by Congress, or remitted, for hearing and determination, to the tribunals of justice. The memorial of the Mayor and City Council of Baltimore, likewise communicated to us and referred to the Committee, and demanding redress from Congress for the grievances which have already been discussed, was also presented to that body, with the full exposition of facts contained in the Message of the Mayor thereunto appended. It is sufficient to say, that the appropriation of money for the support of the Federal police in Baltimore, was made after the presentation of both the memorials in question, and is the only answer which has been given to the prayer of either. In the meantime, the Grand Jury of the District Court of the United States for the Maryland District, then and till lately in session, finally adjourned, without being able to discover any ground of accusation against the members of the Police Board; and the President of the United States, having been called upon to communicate to the House of Representatives the grounds for their arrest and imprisonment, tacitly confessed that there are none, by declining to furnish the information, on the score that it would be "incompatible with the public interests." On the day before the meeting of the General Assembly, (the 29th of July,)—their memorial still pending before Congress—the gentlemen in question, with sundry other citizens of Maryland, against

whom no tangible accusation has been lodged or disclosed, were nevertheless removed, under guard, from Fort McHenry to Fort La Fayette, at the entrance to the harbor of New York, where they are now closely confined, by military order, under many privations and restrictions, at a distance from their families and friends. The order itself which directed their removal described them as "State prisoners"—an appellation hitherto happily unknown in the nomenclature of offenders under the laws and Constitution of this Republic. What may be the further destination or ultimate fate of the victims, can be determined only by those who are able to anticipate and fathom the caprices of irresponsible and arbitrary power.

Upon the facts disclosed by this simple and unexaggerated statement, which has been given without coloring or argument, your Committee propose to comment as briefly as they may. The statement itself would be its own best comment, in any ordinary condition of the public mind. But the tide of partisanship and passion which is now rolling over the land, seems to have swept away the landmarks of our older and better days, and there is scarce a principle of private right or public freedom, so fundamental or so sacred, as to be sure of recognition, or superior to challenge or denial. A little while ago, and all the sympathies and instincts and convictions of the American people, like all the traditions of their own history and of the mighty and free people from which they sprang, were impulsively upon the side of freedom as against power; of law as against prerogative; of self-government as against government imposed. With a strange and fearful revulsion, they appear, of late, to have rushed back a century, to theories which the Declaration of their

Independence and the swords of their fathers were supposed to have buried forever. No man therefore knows the acceptance which may greet, to-day, what yesterday was a consecrated axiom of common right and constitutional liberty. It becomes the representatives of the people of Maryland, then, upon an occasion so important as the present, and in contemplation of grievances so monstrous and so galling as those disclosed by the Memorials before them, to re-assert, distinctly and manfully, the principles which their fathers asserted; to claim, as becomes them, the inheritance which their fathers bequeathed; and to protest and remonstrate, and appeal to their countrymen, against the usurpations, of which their soil has been made the theatre, their State the subject, and their citizens the victims.

It is not a question of union or disunion, of North or South, of treason or loyalty. It is the naked and desperate alternative of constitutional government and free institutions on the one hand, and State annihilation and individual enslavement on the other.

The wrongs disclosed by the Memorials under consideration are of two classes: the one affecting individual citizens—the other assailing the dignity and rights of the State of Maryland herself, as a member of the Federal Union. The principles of constitutional law which apply to the latter class, have never been formally questioned, although in recent executive documents of the Federal Government a disposition has been manifested to ignore or invade them, and practically, as in the instances before us, they have more than once been set at nought. No statesman or jurist, who respects his reputation, can be found definitively to deny that in the sphere of the

powers not delegated by the Constitution to the Government of the United States, the States of the Union have exclusive legislation and supreme jurisdiction within their territorial limits. The Federal Government has no more right to interfere with the State Governments, in their sphere, than the latter to invade the limits assigned to Federal authority. Among the powers not communicated by the Constitution to the General Government are those of internal government and police in the States. Upon so plain a point, judicial interpretations are superfluous. Repeated adjudications of the Supreme Court of the United States have nevertheless recognized the powers in question as belonging to the States exclusively and fundamentally, and have determined that any invasion of them by the Federal Government is fatally repugnant to the Constitution. If it were otherwise, State Governments would not exist. They would be without power and without object. Their control over their own internal polity is, in fact, their very essence as governments; and the only qualification attached to it is, that they shall legislate in conformity with the few limitations of the Federal Constitution applicable to the matter. That done, their sovereignty in the premises is indisputable—a sovereignty not above the Constitution nor against it, but guaranteed by it, and within it, and part of it.

As has already been stated, the Police law of Maryland, after passing the ordeal of the courts, was found to be in strict accordance with the Federal and the State Constitutions, and the officers appointed under it were therefore constitutionally appointed, and held their offices as constitutionally as the President held his. Mr. Lincoln consequently had no more

right to remove the Police Board or Marshal, or to cause Gen. Banks to remove them, than they had to remove Mr. Lincoln or Gen. Banks. Congress has no more constitutional right to appoint or pay police officers in their stead, than the General Assembly of Maryland would possess, to appoint and pay officers for the United States Army or Navy. This is a point about which it is impossible for intelligent men honestly to dispute. If the Commissioners or the Marshal of Police had been guilty or were suspected, upon lawful evidence, of crime, their arrest and trial, by the competent authority, would have vindicated public justice. If their arrest or conviction had left their offices vacant, permanently or for the time, it was for the laws and authorities of Maryland to supply their places. If they were criminal at all, they were criminal and punishable, as individuals and not as officers, for their official character could not qualify or affect their crime or its punishment, for better or for worse. The same principle applies to the police force under them. If any members of that force were guilty of treason or misprision of treason, it was as citizens and not as policemen, and they were punishable as men and not as officers. The Federal authority had only to deal with them as with all individual wrong-doers; and if that created a necessity for their being displaced as officers, it was for the competent State authority of Maryland so to displace them, and to appoint their successors. If an officer of the army of the United States, or a member of the Cabinet, were to commit murder or other crime in Maryland, in violation of the State laws, and were arrested or convicted thereunder, surely the fact of his arrest or conviction would hardly be regarded at Washington, as author-

izing the Governor of Maryland to fill his place in the army or the Cabinet, and the Legislature of Maryland to keep his successor in its pay. And yet the Constitutional authority, in the one instance, would be identically the same as in the other; and the very statement of the proposition, in either case, reduces it to an absurdity. The action of Gen. Banks, therefore—whether regarded as his own action or as that of the Commanding General of the army, or of the President, or any other officer of the Federal Government—was, in the language of the resolution adopted by the Police Board, "not warranted by any provision of the Constitution or laws of the United States, or of the State of Maryland, but in derogation of all of them." The Board did no more than their duty, as constituted authorities of the State of Maryland, when they protested accordingly against it, and they but obeyed the obligation of the law which created their office, and of the oath which they had sworn under its provisions, when they refused to transfer their officers and men to an unlawful and unauthorized command, and declined to recognize, as a police force, in any sense legitimate, the individuals designated as policemen by the Provost Marshal, in open violation of the express laws of the State, and in subversion of its government and constitutional supremacy. The subsequent proceedings of Congress have only added aggravation to the outrage, for as Congress has no better claim than the Executive to invade the constitutional rights of the States, and its attempted confirmation of an unconstitutional act cannot render such act in any sense more constitutional, its indorsement of the usurpation of the President commits the whole Federal Government to that usurpation, and places it in the attitude of

deliberately revolutionizing the fundamental institutions of the country.

The Committee are of course aware of the appeals which have been made to "military necessity," to justify recent encroachments by the Government upon public and private right. Self-preservation, it is insisted, is the right and duty of every government, and the Government of the United States is therefore authorized to do all things which may become necessary to preserve it.

If these ideas were recognized by the Constitution, under any circumstances, (which the Committee deny,) they would not apply to the branch of the present case which is now under consideration. The State of Maryland has not assumed to withdraw herself from the Union, and is in no position of hostility against the Government. She is neither a foreign State nor a conquered country. She is represented in the Federal Congress, although her representatives are practically silenced; and the processes and judgments of the Federal Courts have been uninterruptedly and cheerfully obeyed and respected by her people. All the customary functions of the Government are freely exercised, by its officers, within her limits. She contributes to its support, through her custom-houses, and is to be heavily taxed for the expenses of the fratricidal war which it is waging, against her remonstrance. No Proclamation of the President has ever declared her to be arrayed against the laws, and no troops have been called out for their enforcement among us. Not only has martial law never been proclaimed in Maryland, but Gen. Banks, in his Proclamation of June 27, in the very act of suppressing the State authority and laws, took singular pains to declare

(as has been stated) that it was not his purpose, nor was it in consonance with his instructions, "to interfere, in any manner, with the legitimate government of the people of Baltimore or Maryland." Confessedly therefore—clearly at all events—if any necessity had demanded and could justify the exercise of extraordinary and extra-constitutional powers, it was a necessity which would have been fully met by the action of the Government against individuals, but which in no way demanded, and in no way could have justified, a gross violation of the Federal compact, by overthrowing the constitutional laws of Maryland and destroying her federal equality and constitutional independence. To say that "military necessity" can justify such acts, is to say, as explicitly as could be said in words, that it justifies the Federal authorities in breaking up the Government themselves, under the guise of preventing it from being broken up by others. The forms of government may outlast such a catastrophe, but the Federal Government known to and created by the Constitution must end with it. What remains is revolution, in the garb of government and depending for its legitimacy upon bayonets. The State over whose institutions these are lifted, is no longer a State of the Union, in effect, whatever she may be in name. She has no Constitution, no government, no laws, that she can call her own. She is ruled by external and arbitrary power. Her people are no longer free.

With respect to the individual cases of our fellow-citizens, whose memorial is before us, the principles of constitutional right are equally positive and clear. If the charges of General Banks against the Marshal of Police amount to anything and are well founded, they constitute a case of treason

or misprision of treason, cognizable under the laws, and furnishing cause for arrest and trial by the competent tribunals. Against the Commissioners there is nothing alleged, in either proclamation, upon which a warrant could be lawfully issued, or an indictment found; and they but state, in their Memorial to Congress, what every well-informed citizen must recognize as obvious—that no legal tribunal would hesitate to discharge them, if brought before it, upon sworn allegations so simply frivolous and futile. But if the Government thought otherwise—if its high officers were really persuaded, that in the nineteenth century, and under the free institutions of the freest nation upon earth, it was lawful to arrest and imprison men of high character and irreproachable integrity—or any other men—upon the mere suspicion of their entertaining "purposes" which were admitted to be "not known to the Government," while they were alleged, in the same breath, to be "inconsistent with its peace or security"—surely the courts of justice, which were open, unobstructed and active, were the rightful tribunals to pass upon the matter. The Commissioners, as well as the Marshal, were either charged with crime, or they were not. If they were not, it was a heinous crime to arrest and imprison them. If they were, their rights and the demands of public justice required imperatively that they should be dealt with according to law. To refer to the constitutional provisions in which principles so vital are embodied, appears like seeking after proof that we see by God's sunlight, or have our breath from His air. "The right of the people," says the 4th Amendment to the Constitution, "to be secure in their persons, houses, papers and effects against unreasonable searches and seizures *shall not*

be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." "No person," says the 5th Amendment, "shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger." "In all criminal prosecutions," says Article VI. of the same, "the accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation—to be confronted with the witnesses against him—to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

These provisions are the fundamental law of the land—a law to the government as well as to the people—a covenant of right and liberty, and a limitation upon power. They are an essential and indefeasible portion of the compact which created the Union, and of the conditions upon which alone the people of Maryland and of all the States consented to abide by it. Without them everything else in the Government is worthless, for they represent and guard the great principles of human freedom, which the Union was framed to perpetuate, and compared with which all governmental forms—all names and symbols, all institutions, and traditions, and men—shrink away into dust and nothingness. Of these provisions there is not a single one which has not been

trampled upon in the cases before us. Themselves arrested and their papers seized, without warrant or oath of probable cause—held to answer, not only without presentment or indictment, but after a Grand Jury had failed to indict or present—denied a speedy and public trial—indeed, refused the privilege of trial altogether—carried away, by force, from the State and district where any offense alleged against them must have been committed, if at all—no information of the nature and cause of the accusation vouchsafed to them—the President of the United States, upon the contrary, refusing to communicate such information even to Congress, on the ground that to do so would be "incompatible with the public interests"—confronted with no witnesses against them—allowed to call no witnesses in their defense—separated from their counsel, as from their homes and friends—the Maryland Commissioners of Police now imprisoned at Fort La Fayette, are a living testimonial of the overthrow, within their State, of every barrier erected by the Constitution between the freedom of the citizen and the onslaught of arbitrary power. Let it be to their honor and the honor of Maryland, that they have not sullied her name or theirs, by unmanly submission or mean compliance. It will be the eternal shame of the whole nation, if its people, as one man, do not demand and compel their deliverance.

Upon the ground of "military necessity," already discussed in another point of view, there is no doubt that defense will be made for the Government, against the grave responsibilities which these overt acts of individual oppression must entail.

But the Committee, now, as before, rely upon the Constitution of the United States as a bar to all such attempted justi-

fication or excuse. There is no foundation whatever for it in our history or our institutions, nor is it any part of our Anglo-Saxon inheritance. No mode of reasoning is more false than that which appeals to what are called "general principles of government," to determine the powers of the particular government under which we live. It is a government *sui generis;* to be construed according to its own peculiar principles and none other. It is a government of enumerated and delegated powers, framed expressly upon the theory that it shall exercise no powers except those which are so delegated and enumerated. Where it finds no prerogatives in the Constitution, it was not meant to be clothed with them. There are no "inherent attributes" in or about it. This principle, recognized by all the courts of the land, is insisted upon more strenuously and more repeatedly nowhere, than in the courts of the Northern and Eastern States. The written Constitution of the Union, as all readers of history know, was expressly devised to get rid of inferences and implications of all sorts, from general principles and abstract reasoning. No other government is like ours in this, and the analogies of no other government apply to it. To insist, therefore, that it has the right to preserve itself by any and all means, whether constitutional or unconstitutional—because other governments, which have no written constitutions and no limitations of power, have adopted the rule to keep power as long as power can be kept, and through any means by which they can retain it—is to reason from an analogy which does not exist, and upon principles which are manifestly false, to a conclusion which is subversive of our institutions. This government was not intended to be kept together, by any means, through

the exercise of any powers, or by the application of any principles, except those of its own constitutional providing. To attempt to preserve it, in name, at the expense of the Constitution, is to destroy it, in theory and fact. Once let "necessity," of any sort, be recognized as above the Constitution, and our system is anything and everything which it may be found necessary to make it. As "necessity" has no law, so it has no limit. The same logic by which it justifies the suspension of one constitutional provision, will justify, in like case, the overthrow of all. The same pretext which it invokes to suppress the functions of the Judiciary, may call for the suppression of Congress as well. It may demand a limited monarchy to-day, and by the same process of reasoning may legitimize an absolute monarchy, or a dictatorship, to-morrow. It already finds the liberty of citizens in its way—what is to prevent it from finding their lives equally so, a month hence? If it justifies imprisoning them, in violation of law and Constitution, it will equally justify their assassination. Concede that it has rightfully suppressed the authority of Maryland in Baltimore, and it may, at any time, as rightfully abolish the whole State Government. It is "the tyrant's plea," and constitutional freedom dies with its predominance.

If "military necessity" had been contemplated by those who framed the Constitution, as a justification for suspending or invading its guarantees, would they not have said so in terms? They provided, by special clause, for the suspension of the *Habeas Corpus*—would they have paused at the enumeration of a single case, in which the laws and the Constitution might be temporarily silenced, if they had intended that the Executive or Congress might stifle all the voices of

constitutional liberty, at the sound of the trumpet? Why specify the limits of "military necessity," in the one isolated case, if they meant it to cover all cases? Men who honestly reason to the conclusions of the Administration upon the point in question, seem to labor under the delusion that the framers of the Constitution were technical men of law and peace, who had never known war or its terrible exigencies, and did not cover its contingencies with their forecast, when they were laying the foundations of a mighty nation. They seem to forget that the men who sat in the Convention, were the men who had planned the Revolution and had just returned from its triumphs: heroes and sages, who had grappled with war and its necessities, in field and camp and council: free men, who knew, from experience, what oppression was: bold men, who had smitten arbitrary power and abhorred it, and meant to build a bulwark against it, in war as well as peace, for evermore. When such men, in the charter of their Government, fenced round the freedom of the citizen with the guarantees which have been cited, and gave to military power no privilege to override them, it was because they meant the citizen to be free, and were resolved that military force should be kept in perpetual subordination to the law. They knew that in peace there is small danger to civil liberty, and they meant to rescue their priceless heritage from the chances and ambitions of war. They had entered upon the Revolution, with the Declaration of Independence before them, charging these, among the oppressions of the British King:—

"He has kept among us, in times of peace, standing armies, without the consent of our Legislature."

"He has affected to render the military independent of and superior to the civil power."

They believed these to be grievances, and took up arms to redress and not to re-establish them. They had passed through the trials and needs of the struggle themselves, therefore, without once overturning the laws of the land they were liberating. When the Father of his country, their champion and leader, had delivered up to Congress his sheathed and honored sword, they had listened, with pride, and his venerable form had bent in acknowledgment, as the President addressed him these remarkable words:

"Called upon by your country to defend its invaded rights, you accepted the sacred charge, before it had formed alliances, and whilst it was without funds or a government to support you. YOU HAVE CONDUCTED THE GREAT MILITARY CONTEST WITH WISDOM AND FORTITUDE, INVARIABLY REGARDING THE RIGHTS OF THE CIVIL POWER, THROUGH ALL DISASTERS AND CHANGES."

They had felt this to be his highest praise and theirs; and when, in the first years of his administration, and with his sanction and approval, they amended the work of the Convention, by adding to the Constitution the comprehensive safeguards of civil liberty which have been referred to, it is midsummer madness to dream that it was in his mind or theirs to leave, still, to military discretion or caprice, the inestimable privileges thus fortified anew. When they declared that "the right of the people to be secure in their persons, &c., *shall not be violated*," they had no mental or military reservation in favor of such violation. They meant what they said, and thus and there stands the Constitution, as they made it—and as others have broken it!

Our own immediate ancestors, when they framed the Constitution of Maryland in 1776, embodied in their Declaration of Rights two principles, from which they never departed nor allowed departure, and which they transmitted to us, for equal reverence and observance. They are the 2d and 27th Articles of the Declaration which is prefixed to our existing Constitution, and they were part of the fundamental law of the State when she adopted the Constitution of the Union. Their language is as follows:

"*That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof;*" and—"*That in all cases and at all times, the military ought to be under strict subordination to, and control of, the civil power.*"

With this authoritative announcement before us, of rights which the citizens of Maryland have at no time surrendered, we can never consent to recognize, in the pretext of "military necessity," anything but an aggravation of the wrong it is meant to justify. Neither can we fail, without disgrace, to denounce as usurpation and outrage, the overthrow of our domestic authorities and institutions, the assumption of our internal government, and the oppression of our citizens—by the Executive, the Congress, and the army of the United States.

The experience of this General Assembly and of the Memorialists before us, must admonish us, the Committee believe, that any application for redress to the Federal Government, in any of its departments, is idle and hopeless now. There is but one recourse left to us, and that is to appeal to the public opinion and sense of right of the whole country: to

call upon free and true men, everywhere, in our own State and in our sister States, to lift their voices for the rescue of the Constitution, before it shall have gone down into the vortex whose narrowing and rapid circles have already swept its great bulwarks from around the rights of the people of Maryland. It is not, we repeat, a question of Union or Disunion. It is a question of Constitution or no Constitution: a question of Freedom or no Freedom. There can be no trust and no safety, for any people, in arbitrary power. It is progressive, untiring, unresting. It never halts or looks backward. Call it by what holy name you will: sanctify it by what pretexts or purposes of patriotism you may—under any flag, in any cause, anywhere and everywhere, it is the foe of human right, and by the law of its being is incapacitated from leading to good. As surely as man's nature is corrupt and the lust of power the most corrupting and insatiable of his appetites, so surely will any Government or system sink into anarchy or despotism, if committed to his arbitrary will. There is no life for liberty, but in the supreme and absolute dominion of law. The lesson is written, in letters of blood and fire, all over the history of nations. It is the moral of the annals of republics since their records began. It is legible upon the crumbling marbles of the elder world—it echoes in the strifes and revolutions of the new. Wherever men have thought great thoughts and died brave deaths for human progress, its everlasting truth has been sealed and proclaimed. It will be true—it is true—for us and for ours, as it has been for those who have preceded us; and the consequences of its violation will be upon us, as upon them, unless the Providence whom we are mocking shall break the inevitable chain

which drags effect after cause. And let the people of no other section shut their eyes to the danger, because it seems to be impending over us only, and not over them. Let them not sympathize with usurpation because its blows for the present appear aimed only at sections and individuals whose opinions differ from their own. They know not what a day may bring forth; and they cannot measure the harvest which may spring from a seed-time of impunity in usurpation and wrong. Already the *Habeas Corpus* is suspended in New York, and the District Judge asks the pleasure of the commanding General, and yields—as if the great writ were a favor and not a right, and as if it were a luxury of the Court, and not the privilege of the prisoner. Before long, the suspension of the laws and the Constitution may cease to be for the exclusive chastisement of "rebels," and new tests of "loyalty" may be prescribed in the very States now held most "loyal." If public opinion re-acts against the policy of the Administration, it may be the next "military necessity" to strike down public opinion; and men may then begin to learn, when it is too late, that there is no more security for friends than for enemies, under a system where the power which creates the "necessity" is the exclusive and irresistible judge of its extent and application. Good motives, ascribed to such a power, are no better security than bad ones. Mr. Lincoln himself has said, in his Message, when speaking of another thing—what he, at all events, may not gainsay—*"The little disguise, that the supposed right is to be exercised only for just cause—themselves to be sole judge of its justice—is too thin to merit any notice."* There are those who may hearken to Mr. Lincoln who will not hearken to Washing-

ton; but Washington, in the farewell legacy of his affection, has left us these warning words also:

"LET THERE BE NO CHANGE BY USURPATION; FOR THOUGH THIS, IN ONE INSTANCE, MAY BE THE INSTRUMENT OF GOOD, IT IS THE CUSTOMARY WEAPON BY WHICH FREE GOVERNMENTS ARE DESTROYED. THE PRECEDENT MUST ALWAYS GREATLY OVERBALANCE, IN PERMANENT EVIL, EVERY PARTIAL OR TRANSIENT BENEFIT WHICH THE USE CAN AT ANY TIME YIELD."

We shall more surely and reverently honor the memory of Washington, by following his precepts and example, than even by respecting, under "general orders," the groves and walks around his tomb.

It is no part of the purpose of the Committee to discuss the personal and official conduct of the citizens of whose wrongs they have spoken, for their merits or demerits have but little to do with the great principles which have been violated in their persons. It is but just, however, to say, that the Message of the Mayor of Baltimore—himself fully cognizant of their official proceedings, and a witness beyond question or suspicion—confirms, in the amplest manner, the asseverations of their Memorial, which their own high character for truthfulness and honor would suffice, of itself, to establish. The Memorial of the City Councils corroborates the statements of the Mayor; and all the testimony which surrounds the case demonstrates, to the satisfaction of the Committee, not only the unfounded nature of the suspicions under which the Government has acted, or assumed to act, but the entire good faith in which the Board had met, and was prepared to fulfil its obligations, under the laws of the State and the

Union. It is made conspicuously evident, that in the unfortunate affair of the 19th of April, the Mayor, the Commissioners, the Marshal of Police and his men, at the imminent risk of their own lives, endeavored to suppress the riot and protect the troops assailed. Magnanimous acknowledgment of the fact was made through the public prints by Capt. Dike, a wounded officer, as soon as he arrived in Boston. The Governor of this State, (no willing witness,) on page 4 of his Message of April 25th, bore testimony to it in the following strong language: "The Mayor and Police Board gave to the Massachusetts soldiers all the protection they could afford, acting with the utmost promptness and bravery. But they were powerless to restrain the mob." The President of the United States himself in his interview of April 21st, with the Mayor of Baltimore in Washington, did not hesitate fully to recognize, in the presence of his Cabinet and of the General commanding the army, the fidelity and "loyalty" with which the city authorities had borne themselves, under the trying circumstances referred to. The statement of Mayor Brown, published in the newspapers of April 22d, bears witness to this fact, which is likewise personally known to one of the members of this Committee, and to another member of the House, themselves present at the interview. Mr. Lincoln could not readily have done otherwise, for he knew that on the night of the 19th of April, both Fort McHenry and the United States receiving-ship were protected by the troops under the orders of the Police Board, and that the United States officers in command were notified of the fact and put on their guard also by the good faith of the same authorities. In the face of such facts and acknowledgments,

it does not appear necessary to recapitulate the explanation given by the Mayor, concerning the "concealed arsenal" of between two and three hundred muskets and rifles—belonging to the Corporation and hidden from illegal search in the Marshal's office—with which a body of four hundred policemen were denounced by Gen. Banks as dangerous to "the peace or security" of the Government, in a city whose population was disarmed, whose homes were commanded by the formidable batteries of Fort McHenry, and in whose suburbs an army was stationed of five or six thousand well appointed soldiers.

The Committee respectfully recommend the adoption of the following resolutions:—

WHEREAS, The military authorities of the Government of the United States in Baltimore have assumed to remove from office the Marshal of Police of that city, an officer of the State of Maryland, and to appoint his successor; and have further assumed to dismiss from office the Board of Police of Baltimore, a body clothed with high powers by the State of Maryland for the protection of its citizens; and have actually put an end, by force, to the exercise, by said Board, of its lawful and important functions; and have appointed sundry individuals, in large numbers, to govern the said city, as policemen, in contempt of the constitutional rights of the State of Maryland, and in open and flagrant violation of its laws; and

WHEREAS, The Congress of the United States, instead of rebuking the wrong and usurpation aforesaid, has justified and approved the same, under color of a "military necessity" not known to the institutions of the country and fatal to its liberties, and has appropriated large sums of money for the

compensation of the said unlawful police force, so that the members thereof are maintained thereby in daily and oppressive hostility to the laws of Maryland and the rights of its citizens, and constitute in fact a civil government, established by Congress over the chief city of this State; and

WHEREAS, Charles Howard, William H. Gatchell and John W. Davis, Police Commissioners aforesaid, having been arrested by order of the General commanding the army of the United States, and imprisoned in Fort McHenry, under frivolous and arbitrary pretexts, without oath, warrant, presentment of a Grand Jury, or lawful cause disclosed or trial had, have since been removed, by military force, under the same orders, to Fort La Fayette, in New York, where they are now held, as "prisoners of State," at the arbitrary pleasure of the President of the United States and the officers under him, at a distance from their homes and families, in utter defiance of law and constitution, and in criminal violation of the plainest and dearest rights to which American citizens are born; now, therefore, it is

Resolved by the General Assembly of Maryland, That we solemnly protest, in the name of the State and her people, against the proceedings aforesaid, in all their parts; pronouncing the same, so far as they affect individuals, a gross and unconstitutional abuse of power, which nothing can palliate or excuse, and, in their bearing upon the authority and constitutional powers and privileges of the State herself, a revolutionary subversion of the Federal compact.

Resolved, That we appeal, in the most earnest manner, to the whole people of the country, of all parties, sections and opinions, to take warning by the usurpations aforementioned,

and come to the rescue of the free institutions of the Republic, so that whatever may be the issue of the melancholy conflict which is now covering the land with sacrifice and sorrow, and threatens to overwhelm it with debt and ruin, there may at least survive to us, when it is over, the republican form of government which our fathers bequeathed to us, and the inestimable rights which they framed it to perpetuate.

Resolved, That the President of the Senate and Speaker of the House be, and they are hereby requested to cause copies of these Resolutions to be transmitted to our Senators and Representatives in Congress, and also to the Governors of the several States, with the request that they be submitted by the latter to their respective Legislatures.

A. A. LYNCH,
JOHN F. GARDINER,
JAS. F. DASHIELL,
D. C. BLACKISTON,
TEAGLE TOWNSEND,
Committee of the Senate.

S. T. WALLIS,
J. H. GORDON,
G. W. GOLDSBOROUGH,
BARNES COMPTON,
JAMES T. BRISCOE,
JAMES U. DENNIS,
Committee of the House of Delegates.

LETTERS

TO THE

HON. JOHN SHERMAN,

of the U. S. Senate

CONCERNING THE ARREST OF MEMBERS OF THE MARYLAND LEGISLATURE, AND THE MAYOR AND POLICE COMMISSIONERS OF BALTIMORE IN 1861.

LETTER TO MR. SHERMAN.

BALTIMORE, *December* 12, 1862.

Hon. John Sherman, United States Senate:

SIR:—In the report of proceedings of the Senate on the 9th instant, in the debate on the resolution of Senator Saulsbury, my attention has been called to the following paragraph:

"He (Mr. Sherman, of Ohio) believed, however, that the President had power to make arrests without the forms of law. In the case of Dr. Bachelder and *the members of the Maryland Legislature, who were about to carry their State out of the Union*, he thought the President was justified in making the arrests."

I was a member of the Maryland Legislature in 1861, and was arrested at midnight, at my dwelling, in the city of Baltimore, about the middle of September, in that year, from which time until the 27th of November, 1862, I was confined in one or other of the fortresses of the United States which have been appropriated by Mr. Lincoln to the uses of State prisons. I have never, at any time, been informed of the grounds upon which I was arrested; and I know positively nothing what-

ever in regard to them, at this moment, except what I have seen stated, from time to time, in the newspapers.

The commission, consisting of Messrs. Dix and Pierrepoint, which was created by the Secretary of War for the examination of the cases of prisoners arrested and confined like myself, held a session at Fort Warren in May, 1862, but I was not vouchsafed any communication as to the charges against me, or any opportunity of being heard in my own defence, although the War Department had been officially notified some time before by Colonel Dimick, upon the report of my physician, that my health was seriously affected by my confinement. The commissioners, in fact, took no notice whatever of my existence. Counsel I was not permitted to employ, for as early as the 28th of November, 1861, the United States Marshal at Boston officially visited Fort Warren for the purpose of communicating to my fellow-prisoners and myself an order from Mr. Seward, the Secretary of State, announcing that no one would be recognized by his department (which then had charge of us) as attorney of any State prisoner, and *that the employment of counsel by any of us would be regarded by him as a sufficient reason for the prolongation of our imprisonment.* On the 27th of November ultimo, as I have said, I was released from Fort Warren, without conditions or explanations of any sort. The authority for my discharge—as, I suppose, the authority for my arrest—was a telegram. Under these circumstances I am sure you will recognize it as no more than reasonable that I should take some interest in not being misrepresented after having been for so long arbitrarily and cruelly dealt with in my person.

While I was a prisoner at Fort Warren, I saw, by accident, in the *Daily Congressional Globe*, a speech delivered in the

House of Representatives, on the 11th of March, 1862, by the Hon. John Hickman, of Pennsylvania, in which he stated, *upon the authority*, as he said, *of the President of the United States*, that "Mr. Lincoln had thought it advisable to incarcerate the Maryland Legislature to prevent them from enacting an ordinance of secession, and carrying the State out of the Union." "The President thought," as Mr. Hickman further said, "that legislators were about to meet at Frederick with resolutions of secession in their pockets, and that, if left unmolested, *it was not unlikely a resolution of secession might actually be passed by the Legislature of Maryland. He, therefore, as a matter of extreme caution, thought it better to arrest the members of the Legislature and put them in jail.*"

My companions and myself were, of course, debarred by our situation, when this speech appeared, from all opportunity of joining issue with Mr. Lincoln upon the truth of the fact which it was thus stated that he had assumed as a sufficient reason not only for suppressing, by force, the Legislature of a State of the Union, but for inflicting upon us, personally, the wrong of unlawful imprisonment, and indignities and indecencies which it would cause you shame and disgust for me to describe. What Mr. Hickman stated to have been merely an apprehension of the President's—a thing he deemed "not unlikely"—you are now reported to have asserted as a matter of fact. I see, by the report for yesterday's proceedings, that one of your brother Senators—Mr. Fessenden—appears to have repeated the same charge, in almost the identical language employed by you, and is represented as not only asserting his own belief in its truth, but

as having added that "the President had, no doubt, evidence which led him to the same belief."

Such statements, publicly made by prominent Senators, in their places, in open debate, would entitle the fact asserted to be hereafter assumed as true, if none of the parties interested, who are now at liberty and who know it to be untrue, were to give it public contradiction. The duty of doing this devolves upon myself, at least as imperatively as upon any other member of the Legislature referred to, because I was Chairman of the Committee on Federal Relations in the House of Delegates, and the matter in question, as I will take leave to show you, was brought particularly within the scope of my official knowledge and action in that capacity. I can readily understand how you and others may have been misled by the falsehoods which were so widely circulated through the press in regard to my colleagues and myself, while our voices were silenced by force; and I cheerfully assume that, as a Senator or a gentleman, you would not have made the statement of which I complain, unless you had believed it to be well founded. I trust I may equally assume that you will have pleasure in the opportunity of repairing the injustice which you have done us, in giving it circulation upon your authority.

The special session of the Legislature of Maryland, called by Governor Hicks in 1861, was opened in Frederick on the 26th of April in that year. On the next day, April 27, a select committee of the Senate reported to that body an address to the people of Maryland, which on the same day was unanimously adopted, and was shortly afterwards published, with the individual signatures of the Senators, in all the newspapers of the State.

The principal feature of that address, in fact almost the only purpose of its promulgation, is developed in the following extract:

"We cannot but know that a large portion of the citizens of Maryland have been induced to believe that there is a probability that our deliberations may result in the passage of some measure committing this State to secession. It is, therefore, our duty to declare that all such fears are without just foundation. *We know that we have no constitutional authority to take such action. You need not fear that there is a possibility that we will do so.*

"If believed by us to be desired by you, we may, by legislation to that effect, give you the opportunity of deciding for yourselves your own future destiny. We may go thus far, but certainly will go no further."

You will find the whole address on pages 8 and 9 of the printed journal of the Senate, which is no doubt accessible to you in the library of Congress. It could not be more clear than it is upon the point in dispute. On the 29th day of April, the day after the address was communicated to the House of Delegates by the Senate, an opportunity was afforded for the House to announce its own conclusions, in the most direct and unequivocal manner, upon the constitutional authority of the Legislature to alter the federal relations of the State. On page 19 of the printed journal of the House of Delegates you will find that, on the day last named, a memorial was presented "from 216 voters of Prince George's county, praying the Legislature (if in its judgment it possesses the power) to pass an ordinance of secession without delay."

This memorial was at once referred to the Committee on Federal Relations. Desirous of putting the question at rest, as it was then greatly agitating the public mind, the committee determined to report upon it before the adjournment. There was no difference of opinion among the members of the committee as to reporting unfavorably to the prayer of the memorialists, nor, with five out of seven, was there any doubt as to the propriety of stating, explicitly, as the ground of our recommendation, that the measure proposed was unconstitutional. Two reports were accordingly made. You will find them both on page 21 of the House journal. That of the majority, which I myself signed and presented, as chairman of the committee, contains the declaration, in words, "*that in their judgment the Legislature does not possess the power to pass such an ordinance as is prayed, and that the prayer of the memorialists cannot, therefore, be granted.*" The minority report asks leave simply "to report unfavorably to the prayer of the memorialists."

With the concurrence of the whole committee, I stated to the House the difference of opinion which had caused two reports to be made, and the importance of having the deliberate sense of the House, on the question, announced to the people at once. The grounds upon which it was believed to be beyond the constitutional authority of the Legislature to pass an ordinance of secession were then briefly stated, and a test vote thereupon was taken, by common understanding, on the minority report, which received only thirteen votes to fifty-three. The majority report was then adopted without a division. From that time, down to the forcible suppression of the Legislature by Mr. Lincoln's orders, the subject was

never again mooted, but was considered, on all hands, as absolutely and permanently disposed of. Without pretending to know what was in the breast of every member, I know enough to assert, in the most unhesitating manner, my belief that at the time of our arrest, no individual, of either House, had a thought of again recurring to it. I positively know that if such recurrence had been attempted, it would not have been, for a moment, entertained in the House of which I was a member. From all that I knew then, and know now, of the purposes of the members of the Legislature and their opinions—and I think I was not, and am not, ill-informed—I have no doubt that if they had been permitted to hold the session which was prevented by the arrests of September, 1861, they would have adjourned, in three days, for lack of business to occupy them.

Not only have I given you the facts, truly, in regard to the supposed intention of the members of the Legislature to pass a secession ordinance themselves, and their actual determination to the contrary, but if you will take the trouble to examine the journals (Senate journal, 133, 134, and House journal, 108, 121), you will further see that as early as May 14, 1861, the House of Delegates, by a vote of forty-five to twelve, and the Senate unanimously, had adopted a resolution against the expediency of even calling a sovereign convention of the people of the State. The reasons assigned for that action, in the report which accompanied it, you will find to have been even more conclusive, when the Legislature was suppressed, than when the resolution was adopted.

All these facts are well known to be true by every member of the Legislature, no matter what may be his political senti-

ments. They were equally well known, at the time of our arrest, to every man in Maryland who had troubled himself to follow the course of our legislative proceedings. They were perfectly accessible to Mr. Lincoln at the time when, if Mr. Hickman truly represents him, "he thought it better to arrest the members of the Legislature and put them in jail," merely because he thought it "not unlikely" the facts were otherwise. If what I have stated is not true, its untruth can be shown. If, as Mr. Fessenden suggests, the President has "evidence" upon which his alleged belief to the contrary can be justified, such "evidence" can be easily produced. *I assert to you that there is no such evidence, and that there can be none, because the fact which it is supposed to establish did not exist.* I am willing to stake my veracity and integrity upon the issue, and I challenge the public production of any proof to the contrary of what I have asserted. Doing so, I leave it to your candor and sense of right, to give to gentlemen whom you have been instrumental in injuring, an opportunity of being heard in their own vindication, through you, in the same public way in which the injury has been done.

You will permit me to add, in frankness, that in what I have said I am not to be, for a moment, understood as conceding that Mr. Lincoln would have had the shadow of lawful right to break up the Legislature of Maryland and imprison its members, at his pleasure, "without the forms of law," even if the charge which I have repelled, had been as well founded as it is the contrary. Upon that question, however, I have no right to take advantage of the present communication to obtrude my opinions upon you. Nor will you, I trust, suppose—for it is equally due to frankness that I

should not allow you to suppose—that I have intended to apologize for or excuse any of the views which the Legislature of Maryland, in the exercise of its constitutional and rightful functions, saw fit to adopt and promulgate, at the session referred to concerning the sectional struggle which has since assumed so fierce an aspect and such gigantic proportions. Those views may, of course, be erroneous—for legislatures are not more infallible than congresses or presidents—but they were entertained and proclaimed in good faith, upon mature consideration, concerning questions which deeply interested us and our people, and in which we had a right, and were bound, as individuals and legislators, under the free institutions of the country, to form and express our opinions without let or hindrance, or fear of president, commander-in-chief, or any other functionary or citizen.

I have said that those opinions may be erroneous, but I believe them to be otherwise. I believe now, as I believed when they were adopted, that they were just and wise and patriotic, and I am proud that my humble name was connected with their assertion. I am none the less proud of it because the experience of the bloody and disastrous season which has intervened has confirmed their justice; or because there are tens of thousands now, throughout the country, who are beginning to concur in them, for one who was even disposed to deal fairly with them, at the excited moment when they were uttered. How far the expression of these views may have been the real cause of the arrests, for which the suspected intention to pass an ordinance of secession is the cause publicly assigned, it would not be proper for me here to discuss—my only purpose having been to show that such

intention is and has always been falsely ascribed to the Legislature of Maryland, and that if our arrest was really made upon that ground, it was as wanton as it was cruel and unlawful.

Let the cause have been what it may, however, I have good reasons for believing that the seizure of the members of the Maryland Legislature was not made by Mr. Lincoln's direction or authority at all. I am justified in thinking you will find abundant "evidence," upon proper and sufficient investigation, that the whole high-handed proceeding was the work of Mr. Seward, of his own mere motion, without the previous knowledge or consent of the President, in any shape. That Mr. Lincoln was, afterwards, induced to ratify it, of course, makes his responsibility the same as if he had been its author, but I am speaking only of the facts as I am confident you will find that they existed when the arrests were made. What were the purposes and motives of Mr. Seward, you can ascertain more readily than I. My only knowledge on the subject is derived from an official despatch of Lord Lyons to Lord Russell, bearing date November 4, 1861, and published in the Parliamentary Blue Book. I found it in the New York *Times*, of March 1, 1862. His lordship reports in it the substance of an interview which he had had, a day or two before, with the Secretary of State. "Mr. Seward replied," he says ". . . *that as to the recent arrests, they had almost all been made in view of the Maryland elections.*" I have no comment to make, here, upon such a disclosure.

Very respectfully, your obedient servant,

S. T. WALLIS.

[The tenor of Mr. Sherman's reply may be gathered from the following rejoinder].

REJOINDER OF MR. WALLIS.

BALTIMORE, *January 3d*, 1863.

Hon. John Sherman, United States Senate:

SIR:—I received on Sunday, December 28, the letter bearing date the 26th, which you addressed to me, in professed reply to mine of the 12th. I find it also in the New York *Times* of December 31st, with an editorial notice from which I infer that it was forwarded to that journal, at least as soon as it was transmitted to me. My own letter would not have been handed to the *World* for publication, had not the lapse of a week, without even an acknowledgment of its receipt, given me reason to suppose that you intended to be discourteous as well as unjust. The tenor of your reply, as you have at last furnished it, does nothing to relieve me of that impression, it being obviously intended for a party pamphlet, *ad captandum*, instead of an answer, in good faith, on the subject upon which I addressed you.

You have entirely misapprehended the purpose of my letter of the 12th, if you really suppose, as you profess to do, that I desired or attempted to convince you of my own "loyalty," or that of the Legislature of Maryland, to which I had the

honor to belong in 1861. I do not mean to be uncivil, when I assure you that nothing was farther from my thoughts, and that there are few things to which I could be possibly more indifferent, personally, than the judgment which gentlemen who bear your relation to the government party in the United States may choose to form, in regard to myself, my opinions, or my action. Still less would I venture to deal so disrespectfully with the General Assembly of Maryland, as to recognize, in you or your partisan associates, any right or fitness to pass authoritative judgment upon them or their official conduct.

As I understand the form of government under which the people of this country have, until within the last two years, supposed themselves to live, no citizen is criminally amenable, for his public or private conduct, except to the laws of the land as administered by the constituted judicial tribunals. "No opinion," you yourself admit, "is criminal under our law," and I think I may assume—whether you admit it, or not—that there are no acts, for which any citizen can be lawfully held to account, except those which the law has forbidden. No officer of the Government, whether civil or military, has any more right—as I have been taught—to create offences, or define them except only as the law prescribes, than he has to rob or murder on the highway, or proclaim himself king or sultan. It is of the essence of constitutional government—in peace or in war, as has always heretofore been understood—that the Constitution and laws should be masters, and public officers, like private individuals, only their servants. Beyond the lines of their strict constitutional powers, such officers are as literally without authority,

before the law, as the humblest citizens; for they are, in fact, private wrong-doers, and not public officers, from the moment that they have transgressed those constitutional limits.

Gentlemen of your way of thinking, however, have adjudged these rudimental and long established principles to be wholly obsolete, under the sort of government which you need, and have set up, to serve your purposes. You have accordingly borrowed from the vocabulary of despotism, the name of "disloyalty," to designate that undefined and undefinable offence—not known to free institutions, but which you have seen fit, in the plenitude of your prerogatives, to create—which consists in questioning the wisdom, canvassing the policy, doubting the integrity, or, if need be, resisting the corruptions and usurpations, of those who temporarily hold and prostitute power. With like propriety and consistency you have adopted the catch-word of "loyalty," to indicate the equally undefinable public virtues and excellences which you would have it believed that yourselves and your partisans embody and monopolize. Knowing no "loyalty," myself, in my relation to the Federal Government, except that obedience which I owe, as a citizen, to the laws and Constitution, lawfully and constitutionally expounded and administered, I repeat that I am as free as a man can be, from the slightest desire that you or your fellow partisans, or anyone else, should esteem me "loyal" after your fashion. Recognizing on the other hand, no "disloyalty" to the United States, except in disobedience to the Constitution which my State adopted and ratified, when she became a member of the Federal Government, or to the laws constitutionally enacted under that instrument, I should probably feel myself honored, nine times out

of ten, by your being pleased to consider me "disloyal." As to the more than Roman severity of the rebuke, which you assume the privilege of administering to me, in saying that you could not "fail to be impressed with the entire absence of any avowal of loyal obedience to the Government" on my part, in my letter to you—I must be excused if I cannot treat it with the gravity which you seem to have mustered to pronounce it. I have not yet learned that one American citizen is under any obligation to approach another—certainly, in no sense, more than his equal—with genuflexions or professions of faith or "obedience" of any sort; and I cannot but regard the professed expectation upon your part, to the contrary, as an amusingly presumptuous form of the hallucination under which gentlemen of your political connection, at this time, seem to labor, when they set themselves up, above the law and its tribunals, as the judges and executioners of their fellow-citizens and equals. It is certainly, too, a new idea—among gentlemen, at all events—that a request to you, such as my letter contained, to correct a misstatement of fact, should be subject to demurrer, upon your part, because it was not ushered in with a sort of governmental sacrament. Your notion that the truth is not entitled to vindication, unless it first makes profession of "loyalty," is of kin to the other doctrine, so popular with you, that "rebels have no rights."

But there is still another and a very satisfactory reason, peculiar to yourself, why I was especially careless about concilliating your good opinion in the matter referred to. I have before me a published letter of yours, in which you explain your refusal to vote, in 1861, for the resolution of

Mr. Wilson, of Massachusetts, approving the suspension of the *habeas corpus* by Mr. Lincoln. You distinctly state in that letter, as your reason for withholding your vote—not that you disapproved of the President's acts—for on the contrary you "cordially approved and justified them"—but that you could not say, with Mr. Wilson, that they "were strictly legal, or within his (the President's) delegated powers." "*The legal power to suspend the writ of habeas corpus,*" you add, "*has been recently claimed for the President; but I am convinced that, by the plain meaning of the Constitution, Congress alone must determine the cases in which the public safety requires its suspension.*" "Still," you go on to say, "there are times when our Executive officer must anticipate the action of Congress; but, in such a case, he assumes the hazard of a 'bill of impeachment,' or a 'bill of indemnity.' The President merely assumed this hazard, and, in the vacancy of Congress, *wisely assumed a power not delegated to him by the Constitution.*"

When a Senator of the United States, bound by his official oath to support the Constitution, can bring himself to declare that he cordially "approves and justifies," in his official place, the action of the President in assuming "a power not delegated to him by the Constitution"—in other words, that he approves and justifies a sheer, admitted usurpation and violation of the constitutional rights of the citizen, by the Chief Executive of the Country—who, outside of the Constitution, is nothing, and who has solemnly sworn "to preserve, protect and defend" that Constitution, "to the best of his ability," and is bound, by its paramount provisions, to "take care that the laws be faithfully executed"—I must be allowed to entertain my own opinion as to the fitness of such a Senator, to

understand or appreciate his own relation, or that of any other person, to a constitutional government.

You will permit me to add, that when you addressed me the first paragraph of the letter before me, and after dwelling upon your veneration, "as a student of the common law," for "the right of personal liberty," informed me that you regarded it "as never to be affected except for crime, or in the case provided by the Constitution, when the public safety is jeopardied by rebellion or invasion," but said that you thought the arrest and imprisonment of myself and my colleagues "within this rule," you must have lost sight of the doctrine of the letter from which I have just quoted. It is difficult for a man, whose ideas are not stimulated by the atmosphere of "loyalty" in which you move, to understand how you can regard our arrest as "within this rule" of the Constitution, when you know that we were arrested by Executive mandate alone, without any previous authority given by Congress to suspend "the right of personal liberty," and when you, yourself, have expressly declared that by "the plain meaning of the Constitution, *Congress alone*," and not the President, "*must determine the cases in which the public safety requires its suspension.*" Surely you do not ask us to believe that when you used this language, in 1861, and refused to join Mr. Wilson in saying that the suspension of the *habeas corpus* by the President was "strictly legal or within his delegated powers"—you meant to imply, or entertained, the opinion now suggested in your letter of December 26th, that Congress, by the mere act of authorizing the President "to use military power to suppress the rebellion," *ipso facto* suspended the *habeas corpus*, and rendered "rigidly legal and in the forms of law" the arrest

of any and every citizen, without oath or warrant, whenever and wherever the President in his discretion might see fit. Yet, unless you do mean thus to tax the credulity of the public, I do not see what escape there is left to you, from a discrepancy which is not reputable in either a lawyer or a Senator.

But I cease to be surprised at your thus relying upon the forgetfulness or ignorance of your readers, when I turn to the quotation from the opinion of the Supreme Court, as delivered by Chief Justice Taney in the case of Luther *vs.* Borden, (7 Howard, 45,) to which you carefully omit a particular reference, but which you cite as authority for the monstrous proposition, that the President of the United States and the military officers under him, are clothed—by the mere pendency of a civil war recognized by Congress—with the authority to arrest citizens and search houses all over the country, without process of law, whenever in their judgment there may be reasonable ground for doing so. No one knows better than yourself, that in the opinion from which you made the quotation in question, the Chief Justice was speaking—as the Court was passing judgment—concerning a case in which the military right to make arrests and searches was recognized as arising, not from an implied Executive prerogative, growing out of the mere pendency of hostilities, but from a specific legislative act of the State of Rhode Island, by which martial law was expressly and specially declared, and from which alone the Governor and his military subordinates derived all the authority which they pretended to exercise, or the Court pretended to ascribe to them in the premises. It would not at best have been very creditable to you, as a professional man, to insist—even if you had not concealed the material facts

of the case—that the Supreme Court of the United States had in effect recognized the prerogative which you claim for the President, in the absence of express authority from Congress—merely because they had recognized it in the Governor of Rhode Island, under the express authority of the Legislature of the State. You could with difficulty, look a Court of Justice in the face and argue, upon such a foundation, that a declaration of war, or a recognition by Congress of a war or insurrection as existing, is *ipso facto*, a proclamation of martial law over the length and breadth of the republic. And yet such is your proposition, and you have kept back the facts which would have enabled your unprofessional readers to discover, as all your professional readers know, how reckless your statement is, that the Supreme Court of the United States have given it their sanction in the case from Rhode Island. You have as carefully kept back the other fact, equally well known to you, that in the memorable *habeas corpus* case of Merryman, the Chief Justice of the United States, to whom you would ascribe the atrocious and despotic doctrine you are advocating, repudiated it with the most emphatic directness and solemnity—interposing, as he best could, between its operation and the liberty of the citizen, all the force of his great intellect, the fullness of his learning and wisdom, the purity and dignity of his character, and the authority—alas! helpless—of his venerable age and elevated office. Happily you cannot keep back the palpable and overwhelming fact, that popular opinion—seduced or frightened for a while from its propriety—has already trampled, in its reaction, upon the fallacies and fictions with which corrupt politicians and venal lawyers had sought to circumvent the

intelligence of the people, while usurpation laid its hand upon their rights. Others are aware, if you yourself are forgetful of the fact, that as Senator from Ohio, you no longer represent the feelings or opinions of the people of your State, and that this result is chiefly due to their indignant repudiation of the arbitrary and anti-republican doctrines of which you are still one of the lingering defenders.

The startling character of the legal heresies which you have promulgated, and the extreme disingenuousness of the mode in which you have presented them, have led me, for public reasons, to enter much further into the discussion of them than I had wished, for I personally feel as little interest in your inconsistencies as I do in your opinions. My letter of the 12th December was addressed to you concerning a matter of fact and not a matter of doctrine. You were reported in the newspapers as having used the language which I quoted in that letter, concerning the members of the Maryland Legislature, who were arrested and confined with me by the order of Mr. Lincoln or Mr. Seward. Taking your reported language in connection with the explicit statement made, last spring, by Mr. Hickman, in the House of Representatives, upon the alleged authority of the President, and with the language used by Mr. Fessenden, in the Senate, a few days after your observations were made—all of which I referred to in my letter—I understood, and had a right to regard the whole of you as making the charge, that the Legislature of Maryland, when its members were arrested, had specifically in contemplation the passage of an ordinance of secession. I understood Mr. Fessenden as further saying that the President had "evidence" of such intention. I

took it for granted that you believed your statement to be true when you made it, and I addressed you, in perfect good faith, simply to let you know that it was not true and to appeal to your candor to correct it. I presumed that you would be glad to do so; but at all events I felt it due to myself and my colleagues and to the truth, not to leave uncontradicted a misstatement, to which your official position and the frequent reiteration of the same story, in Congress, might give importance and credit, if it were not denied. If it had been a mere expression of your opinion concerning the merits or demerits of my colleagues and myself, I should certainly have cared and said nothing about it.

Under the circumstances, your proper and natural course was a very plain one. If you had not asserted the fact which I supposed you to have asserted, you had but to say so, and there was an end of the matter. If you had asserted it and had the means of proving it to be true, you could have refused to alter your statement, and have produced your evidence or declined doing so, in your discretion. If you had asserted it and were unable to maintain it, you could have withdrawn the assertion, or have let it stand, according to your disposition or indisposition to be just. You have done none of these things. You deny that you made the statement of which I complain, and then reproach me for having merely replied to what you were reported as saying, instead of anticipating and answering what you were not reported as saying in the newspapers which I read, and what, therefore, I had never seen. After wondering at this and shuddering at the absence of all "avowal of loyal obedience," in my letter, you proceed to argue that my whole communication was based upon a tech-

nicality. It was a "technical denial," you say—which you explain, to signify that I took issue with you upon the isolated charge of our having intended to pass an ordinance of secession. Such an ordinance, you tell me, would have been "but one form of arraying the State of Maryland against the United States," and I have confined myself to a denial of our having contemplated that "form," instead of defending the Legislature against the general and substantial charge of having intended, in some form or other, "to defy the United States and resist its authority." I believe I state your point fairly and clearly. Having made it, you dedicate the remainder of your letter to a promiscuous assault upon the Mayor and Police Commissioners of Baltimore, the proceedings of the Legislature generally, and my individual course and declarations, with a large digression upon the history of the excitement in Baltimore on and after the 19th of April, 1861. From all these things you draw and assert the conclusion that we were all lawfully and justifiably arrested and imprisoned—whether we intended or did not intend to pass the ordinance of secession, which was the exclusive topic of my letter.

Now, I do not know how all this may strike the mass of the partisans who read the *Times*, and for whom you wrote your letter, but it seems to me that the class for whom a Senator of the United States ought to write, will see, at a glance, that it is a mere evasion and a clap-trap. Who was it that raised and framed the issue as to the intention of the Legislature of Maryland to pass an ordinance of secession? Not I, certainly, but Mr. Lincoln, and Mr. Hickman, and Mr. Fessenden, and yourself, as I saw your speech reported.

You are the accusing parties. You had the "evidence" before you—or you ought to have had—when you attempted to justify the outrage which had been inflicted upon us. You framed your indictment, and, in order to escape the just reproach of making loose and random and indefinite accusations, and of having deprived men of their liberty without specific and ascertained cause therefor, you selected, among you, and agreed upon the charge that we *had intended to throw our State out of the Union by adopting a secession ordinance.* You put that fact forward, of your own choice, as the burden of our guilt and the corner-stone of your justification. The President of the United States, speaking through Mr. Hickman, not only made the accusation in words, but with his usual graceful playfulness, when men's dearest rights are in question, had his joke about "the pockets" in which the "resolutions of secession" were to have been carried to Frederick. The Government newspapers, in Baltimore and elsewhere, teemed, at the time of our arrest and afterwards, with stories about the mysterious "ordinance." The ruffians who were sent by the Secretary of State to our dwellings, at midnight, to seize upon our correspondence and rifle our desks and safes, spoke, openly, in the presence of the inmates of our houses, concerning the existence of such an ordinance in the possession of some of us, and of their instructions to search for it. In my own case, they were for six or seven hours in pursuit of it, with all the ingenuity and the appliances of more respectable burglars. *Produce, or get the President to produce all the official papers connected with our arrest, and I will almost be willing to stake my whole case on the fact, that they will be found to specify our intention to pass such an ordi-*

nance, as the precise offence creating the necessity for the suppression of the Legislature. In more than one of the public journals, it was mentioned—and repeated long afterwards at the North, when I was in Fort Warren—that an "ordinance," supposed to be in my handwriting, had actually been delivered to the Secretary of State, whose delight at the possession of such a treasure was, one day, rudely put an end to, by the discovery that it was a forgery—the work, as was stated, of some "loyal" clerk in his own office, whom I had once prosecuted for a former crime. I do not know that the story was false, for it was not officially promulgated—nor do I know that it was true. I refer to it, and to the other circumstances which I have mentioned, in order to show that when the intended passage of an ordinance of secession was set up as our offence, and as the justification for our arrest, the design of the government was specifically to fix upon us that specific "treasonable purpose." I had no reason or right to believe that, instead of meaning what they said, and what they charged, the President and his defenders meant something else, and not what they said and charged. I had no right or reason to suppose that a general, indefinite, treasonable mind and purpose, not concentrated in any particular act, was all that was meant to be ascribed to us, and that when I denied the specific and oft-repeated accusation, upon which all of you agreed, I should be told that it was a "technical denial," and that I ought to have entered upon a defence of the Police authorities of Baltimore, the difficulties on and after the 19th of April, and the proceedings, at large, of the Legislature. If I had done so, would you not have been the first to say that I had guiltily evaded the real and vital ques-

tion? If I, or some other person interested, had not denied that we intended to pass the ordinance in controversy, would you not have assumed and have claimed the right to assume, that such an intention was justly ascribed to us? And if, after gentlemen of high position, like the President and members of Congress, have themselves deliberately selected and framed and tendered an issue of fact, they call the denial of the fact in issue a technicality, as you do, what reason have I to assume that they will not again do the same thing? What grounds have I for believing that you mean to stand by the fresh statements, in your letter, of what you call facts, any more than by the other alleged fact of the ordinance of secession, by which you now refuse to stand? Would I have any security, after showing the untruth and futility of them all, that you would not say I had written a series of "technical denials" of isolated facts, and that the broad fact of my general "disloyalty," or that of some of my friends and acquaintances, was all that you had intended to charge?

There is no arguing, permit me to say, with gentlemen who adopt that style of reasoning. You furnish more than one striking illustration of its vices in the very case before us. You would have it, for instance, that it made no difference to the President, and makes none in the argument, whether the Legislature of Maryland was about to pass an ordinance itself, or to call a Convention which might do the same thing. The one intention, if you are to be credited, would have been as good a justification as the other, for the arrest of the Legislature. You can hardly mean this, although you say it. Any ordinary person who did not desire to arrest for the mere sake of arresting, would suppose, that when the purpose

of the President was to prevent, by summary arrests, the passage of an ordinance of secession, he would arrest only those who intended to pass it, and that instead of arresting the Legislature for intending to call a Convention, he would not even arrest the members of the Convention itself, until he had reasonable certainty that they intended to do the act which he feared. Certainly it ill becomes you to assert that the intention of calling a Convention would have been a "treasonable and disloyal purpose," when the "entire insignificance" which your courtesy ascribes to the Legislature, and the "distinguished loyalty" with which it clothes the people of Maryland, must render it quite certain, in your judgment, that a Convention, if called, would have triumphantly overturned the Legislature and secession together. But the point is not worth pursuing farther. Your reply, I repeat, is an evasion and not a maintenance of your position. My denial was not a "technical denial," but a denial as substantial as the deliberate and intentional charge which it repelled.

It is no part of my purpose to follow you through the long array of allegations and insinuations, outside of the only question between us, by which you endeavor to bolster up the justice of the proceedings which for so long deprived the Mayor and Police Commissioners of Baltimore and the members of the State Legislature of their liberty. I have no means whatever of access to the documents which you profess to cite, or to the correspondence which you say "is in the hands of the Government officers," and upon which you found your principal impeachment of the fidelity of the police authorities. I cannot tell to what extent they exist, or what is their authenticity. But having, as a member of

the Legislature, examined and fully approved the course of the Police Board, I know enough of the facts to justify me in declaring that the statements in regard to them, of which you have allowed your letter to be the vehicle to the public, are partial, garbled and unjust, and frequently untrue. I willingly persuade myself that you have been deceived into promulgating them, for I fancy that I can see in them the work of hands which are not yours, but which private disappointments and malice, and local interests and hatred, have made the perpetual bearers of falsehood and malignant counsels to the Executive chamber, during the whole long agony of this wretched war. If you had reflected, for an instant, it seems to me that you would not have permitted yourself to enter upon a crusade, under such guidance.

It is now nearly eighteen months since the Baltimore Commissioners of Police, then prisoners illegally confined at Fort McHenry, presented their respectful memorial to the two Houses of Congress. They protected their innocence of any offence against the laws of the country; insisted upon their right to be informed of the accusations against them; invited scrutiny into their whole conduct, private and official, and asserted "their readiness to meet, without a moment's delay, any charge which might be responsibly laid against their individual or official proceedings." Suggesting their inability to obtain redress, pending the suspension of the *habeas corpus* in Maryland, they "respectfully and earnestly invoked the immediate interposition of Congress in their behalf." That memorial was treated with open indignity and contempt. From the moment of its presentation, down to this hour, neither the Senate, of which you are a member, nor the lower

House, has given any heed to their complaints, or taken one step towards the vindication of their rights or of public liberty or justice in their behalf. You have not given them the accusations against them (if any) or the names of their accusers. You have not afforded them an opportunity of even proving their innocence, much less have you allowed them a public hearing or trial, before either a Congressional committee or the constituted judicial tribunals. Grand jury after grand jury, selected by a Marshal of Mr. Lincoln's appointment, (to say nothing of grand juries of the State,) has met, since they were taken from their homes in July, 1861. At least one Federal grand jury has deliberately investigated the whole proceedings which you have discussed in your letter, with all the evidence in the possession of the Government before it—including, of course, everything to which you have had access, in order to prepare the defence of the Government which you have published. Yet no bill of indictment has been found, or could be procured to be found. The House of Representatives, certainly—and perhaps the Senate also—called upon the President to state the grounds upon which the gentlemen in question were arrested and imprisoned, but the President refused the information, as "incompatible with the public interests." You were all satisfied with that refusal, and there you and those who think and side with you—representatives of a people calling itself free, and boasting yourselves the special apostles of freedom—allowed the case of your oppressed and helpless fellow-citizens to rest, unheard, unconsidered—scorned. There was not a man of you, who could rise above the level of political and sectional vindictiveness to an act of

simple, common justice, much less to vindicate a great principle, or to strike an honest blow for public and private freedom. You allowed the victims to languish, for nearly a year and a half, in prison after prison, to which they were dragged —you emancipating negroes, the while, by the thousand, as the President now is, by the million. And now that the prisons have been opened, and the prisoners in question released without condition—not willingly, but because public opinion had demanded it at the ballot-box, and the gathering storm of public retribution was too portentous to be longer disregarded—you, a Senator, who have aided in doing all this injury, are not ashamed gratuitously to attack, at an unfair advantage, through the columns of a newspaper, the men whom you have so long refused to charge, or hear, or try, publicly, fairly, openly, and where they could meet their accusers face to face, according to their rights and your obligations. You consent to gather up, from "the hands of Government officers" and local informers, for publication against them, *ex parte* statements and apocryphal scraps, to the sources and originals of which they have no access for challenge or disproof; and under pretext of replying to a letter from me, upon a different subject, which you evade, you thus seek to cover the retreat and the shame of the Government and your own dereliction of duty. Do you think this is worthy of you, as a gentleman or a Senator? Do you think it honorable—nay even decent—in the Executive, or his subordinates, irresponsibly to furnish to you, in such a way and for such purposes, what Mr. Lincoln alleged that it would be "incompatible with the public interests" to disclose to you, as a member of the Senate, to be used legitimately and respon-

sibly, for public ends, in your official place and sphere? If the incompatibility, which he pretended, has now ceased to exist, why does he not respond to the requisition of Congress, as becomes him, instead of privately retailing his "evidence" to you for the pages of a party journal? If the President and his Secretaries of State and War are really able to establish the case against the Police authorities, which you have set up for them, why have they not done so? Why has no grand jury been able to find an indictment against the alleged criminals? If there are letters, and minutes, and telegrams of the parties in question, which would condemn them, as you pretend, and of which the President and his Secretaries have control, why are they not produced, openly and upon official responsibility, before some tribunal honest and fearless enough to drag out the whole truth and bring the accused—or the accusers—to shame and justice? You know very well that the Mayor of Baltimore, and Messrs. Howard and Gatchell, two of the Police Commissioners, during the whole of their long imprisonment, defied and denounced the arbitrary power and conduct of the government, demanding their release as a right, and refusing to purchase it by the shadow of a concession. You know that they were at last discharged, without yielding the ninth part of a hair. Do you think that Mr. Seward and Mr. Stanton are magnanimous and benevolent persons, likely to give way to such contumacy, where they have only to produce against the recusants, from the files of their detective office, conclusive evidence of treason? Is there one word you have said in your long letter, to demonstrate the justice of the arrest of these gentlemen, which, if true, would not make it as rigidly the sworn and bounden duty of

Mr. Lincoln, upon his theory and yours, to retain them in custody still, for trial and punishment?

State the thing as you may, sir, it is not a thing for either you or the Executive to be proud of. Your mode of dealing with the guilt or innocence of men and their liberty, is at variance with the institutions, the habits, the very instincts of a free people, whose love of justice and fair play, and, let me add, of truth—has not yet been entirely debauched away by their representatives and rulers. I will not do the injured men in question the wrong, nor public sentiment the outrage, nor myself the discredit, of submitting their case to your arbitrament, or to trial upon your newspaper impeachment. I assert, now, as matter within my own knowledge, that when, as one of the counsel of the Police Commissioners, I visited General Banks with my colleagues, on the very day when the arrest was made, General Banks, who had made it, assured us, explicitly, that there was no charge against our clients, impeaching their integrity in any way, and that they had been arrested chiefly by way of precaution. I state, further, from my personal knowledge also, that on the 20th of April, 1861, when I accompanied the Mayor of this city to Washington, where he had been invited by Mr. Lincoln for consultation, the President himself, in the presence of his whole Cabinet and of Lieut. Gen. Scott, as well as of my companions and myself, more than once volunteered to declare, that he had carefully investigated the conduct of the Police authorities of Baltimore on the 19th of April, and was entirely satisfied that they had discharged their duty in good faith, and to the best of their ability. No member of the Cabinet ventured to gainsay the judgment of the President, although the

Mayor, with perfect frankness, informed them that in conjunction with Gov. Hicks, the Police Board, of which he was a member, had ordered the destruction of the bridges—that "warlike operation," which you denounce as treason in the concrete. As the name of ex-Governor Hicks has been recently added to the list of patriots and statesmen who adorn the Senate, on the "loyal" side, his certificate upon the question may perhaps weigh somewhat in your judgment. If you will turn to his late Excellency's message to the Legislature of Maryland, on the 25th of April, 1861, you will find him declaring that "the Mayor and Police Board gave to the Massachusetts soldiers (on the 19th) all the protection they could afford, acting with the utmost promptness and bravery." I trust that after reading it, you may modify to some extent the lawyer-like proposition of your letter, that it was an overt act of treason for the Legislature of Maryland to pass the act for the protection of the Police authorities, which you declare to have "outlawed the United States and their soldiers." That statute did not pretend to impair private rights or remedies, as the indemnity law recently passed by the House of Representatives, in Mr. Lincoln's behalf, so unblushingly and absurdly does. Surely you do not mean to intimate it, as your opinion, that Mr. Lincoln's indemnity act "outlaws" not only the thousands who have been his victims, but the whole of the citizens of the States over whom he has brandished the sword of martial law. If you do, I trust that the country will hear from you in the Senate, and not through the *Times*.

But I have dwelt too long on this branch of the subject. I undertake to promise you, in leaving it, that whenever the

President of the United States, on his own responsibility, will give to the late Police authorities of Baltimore an opportunity of confronting their accusers, and of being heard and judged as free men may submit to be, without surrendering their rights and self-respect, they will vindicate their conduct from every just reproach, to the satisfaction of all whose good opinion is worth having. If you doubt what I say, you have only to have the experiment made. I think I may add that the gentlemen named will manage to find for themselves a way of bringing the matter before some legitimate tribunal, where some, at least, of those who have been engaged in "outlawing" them, will have an opportunity of ascertaining how far the justification you have set up is well-founded, in fact or law.

I pass, now, to your assault upon the Maryland Legislature, concerning which, and its proceedings as challenged and grossly distorted and misrepresented by you, I propose to enter into but little discussion. It is due, however, to my colleagues from Baltimore and to myself, that I should deny, in the most unqualified manner, the truth of the statement which you make, that our election was but a "form," and that we were chosen only because "no one dared to oppose the armed rebellion, headed by the Police Commissioners." Among all the wholesale fictions with which you have been furnished, by your collaborators here, there is not one more profligate than this. I assert, what no man of veracity will deny here—under his own signature, and alleging fact in verification of his denial—that from the time of the inauguration of the Board of Police of Baltimore in the spring of 1860, down to the hour of its suppression by military force,

in the summer of 1861, the freedom of the ballot-box and of access to it was as sacredly and perfectly guarded and maintained for all citizens, of all parties and opinions, as ever, under any system, was or could be possible. I challenge the production of any charge to the contrary, from the worst partisan or the most corrupt press among us, until after the suppression of the Board had rendered slander necessary to vindicate usurpation. I assert, and am ready to prove, whenever a single fact to the contrary is alleged, that the preparations for securing a free and fair election, on the 24th of April, 1861, were as ample and in as good faith as ever before, and that no man in the whole community—not even the most rabid and obnoxious and unworthy partisan—would have met with the slightest obstacle, in voting for any candidates whom he might have preferred. Indeed I challenge proof to the contrary, when I further assert, that, during the whole of the excitement which occupied and followed the 19th of April, the Board of Police extended to every citizen of Baltimore the most ample and efficient protection in person and property, and that security in both were actually had, by all, amid the heats of the strife which occurred and was impending, to an extent which puts to shame the contemporaneous condition of the large cities of the North. You may doubt or disbelieve this, honestly, I admit. But it is true nevertheless. You have no right to doubt it, because it was officially stated to you by the Mayor and City Council, in their memorial to Congress, in 1861, and by the Board of Police in theirs, and an investigation of its truth was respectfully and earnestly besought at your hands, which you refused. But I do not wonder at your doubting it, amid the crowd and

press of falsehoods with which your partisans, here and elsewhere, have overwhelmed the history of those times, during the imprisonment and absence, and the enforced silence, of those whom you have all joined in endeavoring to crush for their opinions. That many persons, apprehending further military collision, left the city with their families, for the time, is undoubtedly true. That others, who probably are your special informants, ran incontinently away, in sheer fright, when there was not the slightest danger to them or theirs, is equally true, and it is quite natural that these last should magnify the dangers before which their own heroism quailed. But that any man, of any party, who asked protection from the Police, had any difficulty in obtaining it, or that any citizen of Baltimore had any real reason for seeking personal safety in flight, is wholly untrue. Least of all, as I have said, is there any ground for intimating a question as to the perfect freedom of the ballot-box on the 24th of April. The vote was small, because there was but one ticket in the field; yet, although I was a member of the delegation elected, I will not allow false delicacy to prevent me from saying, that I believe it was personally unexceptionable to the great mass of the people. It was composed of men of business, who were not professional politicians, and who generally were known to be men of character, intelligence, and moderation in their views. To many of them, the acceptance of such a place was well known to be a sacrifice. To myself it was a serious one, which only a sense of duty as a citizen prevented me from refusing to encounter. Of the delegation, the majority had been prominent members of the old Whig party—some of them, at one time, active members of the American party.

I believe that we should have been fairly and easily elected, by an overwhelming majority, over any opposition that might have been presented; and I know that if there had been any opposition, it would have found the ballot-box as free as we found it, and would have been fairly dealt with by the Police authorities and ourselves. If you really believe that we never represented more than nine thousand voters out of thirty thousand in the city; that the rest of the State was of "distinguished loyalty;" that our support grew smaller and smaller, from day to day, afterwards, and that we were actually frightened from our intention of adopting measures of treason, by the "threat of expulsion" on the part of the "loyal people" of the town of Frederick—to say nothing of the "menace of resistance" from Baltimore—I should be pleased to know in what consisted the danger which Mr. Lincoln, or anyone else, had a right to apprehend from us. What pretext or excuse had he for arresting us, when in addition to this local security and our "entire insignificance," he had armed possession of the whole State, and had the Governor to aid him in disarming its inhabitants?

You entirely misapprehend—you certainly misrepresent—the state of things in Baltimore on and immediately after the 19th of April, 1861. It was a reign of comparative unanimity in feeling and opinion—not a reign of terror. The facts have been concealed from you, or distorted, or falsified, to answer the purposes of your informants. When I made the speech to the people, on the 19th, of which you have quoted an absurd and false report, I was conducted—nay, almost forced to the stand, by one of the most prominently "loyal" gentlemen of Baltimore—immaculately "loyal" now

as then—who not only applauded what I said, to the echo, but congratulated me upon having said it, when I had finished. It was but a few days afterwards that he invited me to join a company he was organizing to support the authorities. My poor remarks, on the occasion referred to, were received with tremendous cheering, by crowds of citizens—"Union men" then and theretofore—many of whom are so desperately "loyal" even now, that you may count on their support of the Administration and the war, to the overthrow of every vestige of the Constitution, except the clause which secures "the obligation of contracts." I have had recent access to an autograph subscription-list containing the signatures of many leading mercantile houses of the most unconditional and uncompromising "loyalty," and now in the very bosom of the true faith, with yourself—wherein they attested the sincerity of their respect for the motives and purposes of the authorities, on the 19th of April, by subscribing amounts, set opposite to their names, for the purpose of purchasing arms, to be used under the direction of the Board of Police. I dare say the list will be given to the public, before long. It was probably with these arms—for there were scarcely any others—that the Baltimore *American*, since and now the organ of the Government here, and certainly the very glass and mould of "loyalty" among us, suggested on the 20th of April, that the Northern troops should be met "beyond the limits of the city"—a suggestion however which the Police authorities did not see fit to adopt. It was only the day before, that the same patriotic journal, in its afternoon issue, had said—in words similar to those which you ascribe to me on that point—and which, with some unimportant modifica-

tion of language, I did certainly use—that "the blood of our citizens, shed in our streets, is an irresistible appeal to us all to unite as Marylanders." The appropriation of half a million by the Mayor and City Council of Baltimore, which you denounce the Legislature for having ratified, was, at once and spontaneously, made effective by a voluntary tender of the whole amount, as a loan, on the part of the banks, on the very day of the adoption of the city ordinance. I was present at the Mayor's office on that day, when a committee of bank officers, as "loyal" as yourself or General Butler, made tender of the money to his Honor, and I well remember the jubilant satisfaction which the chairman expressed at having been authorized to do so. Nothing, I am sure, would be more difficult than for you to convince all the worthy gentlemen to whom I have alluded, that they did what would have justified the President in sending them to Fort Warren, instead of taking counsel with them and theirs, as he has done, to suppress the "disloyal element." You, doubtless, remember the fine specimen of elegiac composition which issued from Fort McHenry, when the proprietor of the *American* was torn from his "sorrowing wife and daughters" and shut up "in a depot of traitors" for a day or two, because of his precipitate attempt to sell an account of the "grand strategic movement" to Harrison's Landing!

I could give you a host of other examples, to illustrate the public unanimity which I have described as existing. They will not be hidden much longer under a bushel, I imagine—but I presume you will be satisfied with a single additional one. Indeed, I do not see how, in examining the report of the proceedings in Monument Square, on the 19th of April,

you could have been withdrawn, by the observations ascribed to so humble an individual as myself, from the speech of your present colleague, then his Excellency, Governor Hicks, upon the same occasion. If you had taken the trouble, you would have learned how that "loyal" citizen and officer then and there declared that "*he had had three conferences with the Mayor, and they had agreed upon every point presented*"—and further that "*he was a Marylander and would sooner have his right arm cut off than raise it against a sister Southern State!*" I am sure you must have seen, from your obvious familiarity with the proceedings of the Legislature, how in his opening message, a few days after, the Governor showed, by his correspondence, that he had remonstrated against the sending of any more troops through Maryland, and had protested to General Butler against the landing, at Annapolis, of the division commanded by that person. If this, and what I have said before, be not sufficient to satisfy you that everybody ought not to be hanged, who was naturally and painfully excited by the shedding of the blood of our people in our streets, and by the barbarous threats of Northern presses and mobs, and who desired to avert the shedding of more blood—let it at all events furnish you with a test of Mr. Lincoln's impartiality in the use of his supreme prerogatives. Consider Governor Hicks, I pray you, as a Senator of the United States, with his right arm as yet unamputated, and Mr. Brown and myself—who vowed no limbs to the surgeon—as prisoners just released from Fort Warren after fourteen months of ruthless captivity.

Your charge that the members of the Legislature were only deterred by fear or menace of popular violence from adopting

such measures as they deemed expedient, is as untrue as the charge already refuted, that the election of the Baltimore delegation was the result of illegal pressure upon the voters. I am quite sure that no definite threats of popular outrage ever reached the Legislature to my knowledge; and certainly no one attached any importance to them, if they were made. There was some foolish talk, among a few excitable people at Frederick, which I have no doubt there were knaves enough to encourage; but I know that it was only laughed at, and the parties who were guilty of it knew better than to carry it beyond the swagger of the bar-rooms. The "Force Bill," as you call it, was not passed, simply because it was both inexpedient and at variance with the Constitution of the State, in the judgment of the large majority of the members of the Legislature, who were opposed to it. If we had deemed it otherwise, we should not have hesitated or feared to pass it; but although it went to a second reading in the Senate, the opposition to it on the part of the members of the House became so decided, as soon as its provisions were generally canvassed, that it was recommitted in the Senate, and died in committee. I never knew of the existence of the bill, or of the purpose to introduce it, until after it was printed and had passed to the second reading; and I do not believe that more than one or two members, at farthest, of the Baltimore delegation, were better informed. I know that we were unanimously opposed to it, as soon as we knew what it was.

So much for the measures which we did not pass, and which you seem to consider as justifying our arrest, quite as decidedly as those which we adopted. For these last I have no apology or explanation to make, to you or to any one. I have reviewed

them, carefully and calmly, and am ready to stand by them all. Of the position which they gave to the State, upon the great questions which have severed the Union, I am proud, as in my last letter I said to you. The sad experiences of the intermediate time have given them a sanction and a confirmation, which no candid or rational man can dispute. Those measures constitute the whole of what, as a Legislature, we did, or thought it proper and practicable, and within our legitimate sphere, to do; and the frank and explicit manner in which our conclusions in regard to the war, its causes, conduct, and consequences, were promulgated and officially communicated to the Government—even after the armed forces of the United States had full possession of the State, and the President had disregarded the *habeas corpus*, and had arrested and imprisoned the Police authorities of its chief city—would have satisfied a fairer man than yourself, that it was a libel to charge us with "conspiring," or with being intimidated from the execution of purposes which we entertained. With these measures and the recorded opinions of the Legislature before the world, I could not falsify, if I would, the position which we occupied. Nor can you. We believed the war to be unjust and unconstitutional—brought about by the aggressions of the Northern people upon the rights of the South, and portending a military despotism to both sections. We believed the restoration of the Union, by force of arms, to be a cruel absurdity and impossibility, and we desired and implored the Government of the United States to give us peace, upon the only terms on which we believed it to be possible—the recognition of Southern independence. In a quarrel in which we believed the South to have the right on

its side, our sympathies were, of course, with the South, and they were strengthened by habits, ties, associations, and common institutions and interests. We were satisfied that the troops which were passing through the State to Washington—and which Mr. Lincoln, in my hearing and that of his Cabinet, on the 21st of April, 1861, solemnly declared to be intended only for "the defence of the Capital," and not for invasion—were meant to subjugate the Southern States. We believed that they were destined, sooner or later, to be the bearers of an Emancipation Proclamation, and to stir up servile insurrection. We regarded them, therefore, as Governor Hicks had styled them, in his letter to General Butler, as "Northern troops"—on an unlawful, sectional and unconstitutional errand, to which the pretence of "restoring the Union" gave no sanction in our eyes. We believed the people of the State of Maryland, in the event of the dissolution of the Union, to have the right of determining to which of the two sections their feelings and interests inclined them, and we had no doubt that, upon that naked question, three-fourths of them, at least, would seek to join their destinies with those of the South. These opinions we had the unquestioned right to entertain and to express, and we did so. You will find them all openly proclaimed in the reports and resolutions which the Legislature adopted. They are my deliberate opinions, still, and I know of no change, in regard to them, among my colleagues. But though they were our opinions, we knew and felt that we were not the people of Maryland, and that we had no right, as a mere legislative body, to pass an ordinance of secession, or to revolutionize the State, or to alter its government, or to plunge it into war, of our own

motion. These things were for the people themselves to determine on, and to do or to leave undone; and I solemnly asseverate that it never entered into the plans or purposes or contemplation of the Legislature, to substitute itself for the people, in these regards, or to "conspire" to do so. We should undoubtedly have placed our people in a condition to defend themselves and the State against lawless aggression from the General Government, if we had been able to do it. This was our duty, and it was the constitutional right of the people, and subsequent sufferings and wrongs have demonstrated its paramount necessity. If we could, we should, beyond all peradventure, have prevented the suppression of the municipal government of Baltimore and the General Assembly of the State, and the substitution of a military commandant, and his will, for the laws and Constitution of Maryland. We should never have permitted the illegal arrests, the searches and seizures without oath or warrant, which have trodden out the fundamental guaranties of freedom among us. We should not have tolerated the suspension of the *habeas corpus* at Mr. Lincoln's pleasure, or the suppression of newspapers and free speech, or have allowed a Judge to be dragged, bleeding, from the bench, as in the case of Judge Carmichael, because he had given the provisions of the Constitution, securing the liberty of the citizen, in charge to a grand jury. Least of all would we ever have consented that an "election" should be held and directed and consummated in Maryland, under the proclamation of a General of the United States army. Of all this you may rest assured.

Unhappily, however, we were powerless, and we knew and felt it. The people were unarmed and defenceless. The

Governor of the State was a reckless partisan, who subordinated his duties to his passions, and had no greater respect for his State or himself, than to permit one of his official proclamations to be contemptuously "countermanded," through the newspapers, by a recruiting captain of United States volunteers in Baltimore. We could have nothing to hope from such an Executive—his "right arm" to the contrary notwithstanding. Being less unscrupulous than he, we would not invade his constitutional province, and without doing so we could do nothing that required Executive co-operation. For even the protection of our people, therefore, the execution of our laws, and the passive maintenance of the dignity and constitutional rights of our State, we were helpless. How absurd to contemplate us as in an aggressive and belligerent attitude towards the Government and armies of the United States! Your grave attempt to set up the doctrine that our mere legislative proceedings—laws passed and resolutions adopted by us, as a State Legislature—were "overt acts" of treason, under a ruling of Chief Justice Marshall's, will not deceive anyone who has access to the horn-book of our common profession. If our resolutions were foolish—or wicked, as you would have it—they were still merely the expression of opinions. If our laws were unconstitutional, they were simply void, and the peril was to those only who might happen to act under them. You have aided in passing too many unconstitutional laws, yourself, for any one to doubt, who has observed your public career, that you are altogether aware of your impunity, as a legislator, in doing so.

I believe I have answered whatever it is proper I should answer in your letter. I have done so, necessarily at great

length and with much inconvenience to myself, in view of my health and occupations. I have only answered you at all, because I felt that you had taken an unfair advantage of my previous letter, and I did not choose you should do so unnoticed. The cold-blooded and unmanly comment which you make on my reference to the indignities and indecencies of our treatment, as prisoners, would have deprived you of any right to a reply, as a matter of respect to you. If it were possible that the Confederate Government had in fact dealt as brutally with prisoners, as we were, at times, treated, it would have seemed small reason why you should select such brutality as the only point for imitation. You are a better judge, however, than I am, of the views of your political associates, and I, therefore, presume you speak advisedly when you indicate that the Administration revenges upon kidnapped and helpless citizens of the United States—who have nothing to rely on but its sense of justice and humanity—the wrongs which it professes to have received from enemies in arms.

I am, Sir, your obedient servant,

S. T. WALLIS.

APPENDIX.

General Banks' Proclamation of June 27th.

Proclamation to the People of the City of Baltimore.

Headquarters Department of Annapolis,
June 27th, 1861.

By virtue of authority vested in me, and in obedience to orders, as Commanding General of the Military Department of Annapolis, I have arrested, and do now detain in custody, Mr. George P. Kane, Chief of Police of the city of Baltimore. I deem it proper at this the moment of arrest to make formal and public declaration of the motive by which I have been governed in this proceeding.

It is not my purpose, neither is it in consonance with my instructions, to interfere in any manner with the legitimate government of the people of Baltimore or Maryland. I desire to support the public authorities in all appropriate duties; in preserving peace, protecting property and the rights of persons, in obeying and upholding every municipal regulation and statute, consistent with the laws of the United States and of Maryland.

But unlawful combinations of men, organized for resistance to such laws, that provide hidden deposits of arms and ammunition, encourage contraband traffic with men at war with the government, and while enjoying its protection and privileges, stealthily wait opportunity to combine their means and forces with those in rebellion against its authority, are not among the recognized

or legal rights of any class of men, and cannot be permitted under any form of government whatever. Such combinations are well known to exist in this department.

The mass of citizens of Baltimore and of Maryland, loyal to the Constitution and the Union, are neither parties to nor responsible for them. But the Chief of Police is not only believed to be cognizant of these facts, but in contravention of his duty, and in violation of law, he is, by direction or indirection, both witness and protector to the transactions and the parties engaged therein. Under such circumstances the government cannot regard him otherwise than at the head of an armed force, hostile to its authority and acting in concert with its avowed enemies.

For this reason, superseding his official authority and that of the Commissioners of Police, I have arrested and now do detain him in custody of the United States; and in further pursuance of my instructions, I have appointed for the time being Col. Kenly, of the first regiment of Maryland Volunteers, *Provost Marshal*, in and for the city of Baltimore, "to superintend and cause to be executed the Police Laws provided by the Legislature of Maryland," with the aid and assistance of the subordinate officers of the Police Department. And he will be respected accordingly.

Whenever a loyal citizen shall be otherwise named for the performance of this duty, who will execute these laws impartially and in good faith to the government of the United States, the military force of this department will render to him that instant and willing obedience which is due from every good citizen to his government.

NATH. P. BANKS,
Maj. Gen. Com'g Dep't of Annapolis.

PREAMBLE AND RESOLUTIONS ADOPTED BY THE BOARD OF POLICE, ON JUNE 27TH.

Whereas the laws of the State of Maryland give the whole and exclusive control of the police force of the city to the Board of Police, organized and appointed by the General Assembly; and not only are the said Board bound to exercise the powers in, and to discharge the duties imposed upon them, but all other persons are positively prohibited, under heavy penalties, from interfering with them in so doing; and

Whereas there is no power given to the Board to transfer the control over any portion of the police force to any person or persons whomsoever, other than the officers of police appointed by them, in pursuance of the express provisions of the law, and acting under their orders; and

Whereas by the orders of Major General Banks, an officer of the U. S. Army, commanding in this city, the Marshal of Police has been arrested—the Board of Police superseded, and an officer of the army has been appointed provost marshal, and directed to assume the command and control of the police force of the city; therefore be it

Resolved, That this Board do solemnly protest against the orders and proceedings above referred to of Major General Banks as an arbitrary exercise of military power, not warranted by any provision of the constitution or laws of the United States, or of the State of Maryland, but in derogation of all of them.

Resolved, That whilst the Board, yielding to the force of circumstances, will do nothing to increase the present excitement, or obstruct the execution of such measures as Major General Banks may deem proper to take on his own responsibility for the preservation of the peace of the city, and of public order, they cannot, consistently with their views of official duty and of the obligations of their oaths of office, recognize the right of any of the officers and men of the police force, as such, to receive orders or directions from any other authority than from this Board.

Resolved, That in the opinion of the Board, the forcible suspension of their functions suspends at the same time the active operation of the Police Law, and puts the officers and men off duty for the present, leaving them subject, however, to the rules and regulations of the service as to their personal conduct and deportment, and to the orders which this Board may see fit hereafter to issue when the present illegal suspension of their functions shall be removed.

CHARLES HOWARD, *President*,
WM. H. GATCHELL,
CHARLES D. HINKS,
JOHN W. DAVIS,
GEO. WM. BROWN, *Mayor*,
and Ex-officio Member of the Board.

GENERAL BANKS' PROCLAMATION OF JULY 1ST.

To the Public.

HEADQUARTERS DEP'T OF ANNAPOLIS,
Fort McHenry, July 1.

In pursuance of orders issued from the Headquarters of the Army at Washington, for the preservation of the Public Peace in this Department, I have arrested and do now detain in custody of the United States the late Members of the Board of Police—Messrs. CHARLES HOWARD, WILLIAM H. GATCHELL, CHARLES D. HINKS and JOHN W. DAVIS. The incidents of the past week afforded full justification for this order. The Headquarters, under the charge of the Board, when abandoned by the Officers, resembled in some respects a concealed Arsenal. After public recognition and protest against the "suspension of their functions," they

continued their sessions daily. Upon a forced and unwarrantable construction of my Proclamation of the 27th ultimo, they declared that the Police Law was suspended, and the police officers and men put off duty for the present, intending to leave the city without any police protection whatever. They refused to recognize the officers or men necessarily selected by the Provost Marshal for its protection, and hold subject to their orders, now and hereafter, the old Police force, a large body of armed men, for some purpose, not known to the Government, and inconsistent with its peace or security. To anticipate any intentions or orders on their part, I have placed temporarily a portion of the force under my command within the city. I disclaim on the part of the Government I represent all desire, intention and purpose to interfere in any manner whatever with the ordinary Municipal affairs of the City of Baltimore. Whenever a loyal citizen can be named who will execute its Police laws with impartiality and in good faith to the United States, the military force will be withdrawn from the central parts of the municipality at once. No Soldier will be permitted in the city except under regulations satisfactory to the Marshal; and if any so admitted violate the municipal law, they shall be punished according to the civil law, by the civil tribunals.

NATHANIEL P. BANKS,
Major General Commanding.

NOTES.

[The following is a brief summary of the more important occurrences referred to in these papers:—

The events which followed the election of Mr. Lincoln in 1860; the rapid growth of hostility between the North and South; the secession of South Carolina in December, and of five other States in the following January, and the apparent rapid drift toward civil war, agitated Maryland profoundly. As she was a Border State, it seemed certain that if war should break out, her territory would be the field of active operations. While both parties were represented in the State, the overwhelming majority of her citizens were anxious that some arrangement might be reached by which war might be averted and all the constitutional rights of the States assured. The feeling against any attempt at forcible coercion of the seceding States was very general. It was in this time of excitement and uncertainty that the meeting was called at the Maryland Institute.

The fall of Fort Sumter, on April 12th, 1861, and the call of the President for volunteers, raised the excitement in Baltimore to fever-heat; and the passage of Northern troops through the city on the 19th, provoked an outbreak in which lives were lost on both sides. As the Northern press was now clamoring loudly for the occupation of Baltimore, and as the passage of further troops would have certainly led to an armed conflict, the bridges to the north and northeast of the city were destroyed by orders of the Mayor and Governor. The troops sent forward to Wash-

ington were conveyed by way of Annapolis. Baltimore was occupied by the Federal forces, May 13th.

The Legislature at its previous session had unseated the delegation from Baltimore, and as a special session had been called to meet in Frederick (Annapolis being occupied by Federal troops), a special election was held on April 24th. But one ticket was presented, and the Delegates elected were, S. T. Wallis, John C. Brune, Ross Winans, Henry M. Warfield, J. Hanson Thomas, T. Parkin Scott, H. M. Morfitt, Charles H. Pitts, William G. Harrison, and Lawrence Sangston, gentlemen who possessed the entire confidence of their fellow-citizens.

The most important acts of this session were the sending of Commissioners to Washington, the declaration that the Legislature had no power to pass an ordinance of secession, and that it was inexpedient to call a sovereign Convention of the people. On May 14, they adjourned until June 4.

On the day of the adjournment, one of the members, Mr. Winans, on his way homeward, was arrested by order of Gen. Butler and imprisoned in Fort McHenry. On the same day, also, Major Morris, in command of the Fort, refused to obey a writ of *habeas corpus*, issued by the Judge of the U. S. District Court. On May 25 Mr. John Merryman of Baltimore county was arrested at his home and conveyed to the Fort on a charge of treason. On the following day Chief Justice Taney, of the U. S. Supreme Court, issued a writ of *habeas corpus* directed to Gen. Cadwallader, ordering the production of Merryman in court, to which that officer replied, refusing to obey, and stating that he had been authorized by the President to suspend the writ of *habeas corpus*. The Chief Justice then issued an attachment against Gen. Cadwallader for contempt of court; but the deputy marshal was not allowed to serve the writ, nor even enter the Fort. Mr. Merryman was afterwards released without trial.

In response to inquiries from the Legislature, the Governor replied that having received no official information of the facts complained of, he had taken no measures to protect the citizens of the State.

These were the circumstances which led to the Report of June 11, the Resolutions appended to which were adopted by the Legislature and recorded as a solemn Protest on June 22.

On June 27, Col. George P. Kane, Marshal of the Police of Baltimore, was arrested and imprisoned by order of Gen. Banks, and a provost marshal appointed, who announced to the Police Commissioners that their authority was suspended. Against this arbitrary proceeding the Commissioners protested (the Mayor concurring) but abstained from any further exercise of their duties. For this protest they were arrested by an armed force on the night of July 1, and incarcerated in Fort McHenry. They then caused the Memorial (drawn up by Mr. Wallis) to be presented to the Federal Congress, but no notice was taken of it beyond a Resolution in the House, asking the President to communicate his reasons for these arrests, which he declined to do. Mr. Hicks, one of the Commissioners, on account of ill-health, was allowed to return to his home on parole; but the others were sent to Fort Lafayette, off New York, and then to Fort Warren in Boston harbor.

On September 12, Mayor Brown and the Baltimore Delegates, Mr. Wallis included, were arrested, together with several other prominent citizens, and sent to Fort McHenry, and thence subsequently to Fort Warren. On November 27, 1862 (one or two having been previously set free), they were all released unconditionally.]

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[To Mr. Wallis's own copy of this Report he has prefaced the following MS. note.]

If my participation in the events of these times should be the subject, hereafter, of remembrance or consideration, I am willing that my reputation for personal and political rectitude, and for fidelity to the institutions of my State and the Union shall depend upon the judgment which may be passed on this Report.

S. T. WALLIS.

May 24, 1863.